IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.9156 of 2011
and
Crl.M.P.No.1 of 2011

1. S.Ravishankar

2. Ratna Stores (Firm) Thanga Maligai,
Siva Complex, 79, Usman Road,
T.Nagar, Chennai-17. ... Petitioners/ Accused

//vs//

Neurotronics System India Private Limited,
represented by its Managing Director,
Mr.J.Mohammed Sulaiman, Old No.12/1,
New No.25, First Floor, Circular Road,
United India Colony, Kodambakkam,
Chennai 600 024. ... Respondent/Complainant

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.10190 of 2009 on the file of the XVII Metropolitan Magistrate at Saidapet, Chennai, quash the summons and all further proceedings as against the petitioners herein.

For Petitioners : Mr.S.Baskaran
for M/s Ram and Ram

For Respondent : Mr.V.Nandakumar

ORDER

Heard Mr.S.Baskaran, learned counsel appearing for the petitioners and Mr.V.Nandakumar, learned counsel for the respondent.

2. The present petition has been filed under Section 482 of Cr.P.C seeking for a direction to call for the records in C.C.No.1090 of 2009 on the file of the XVII Metropolitan Magistrate at Saidapet and quash the proceedings.

3. The petitioners are the accused in C.C.No.1090 of 2009 on the file of the XVII Metropolitan Magistrate, Saidapet. The respondent/complainant has filed a private complaint under Section 200 of Cr.P.C against the petitioners/accused for an alleged offence punishable under Section 138 of Negotiable Instruments Act. The case of the respondent/complainant is that he is carrying on business in manufacturing electronic display sign boards and that the first accused/first petitioner on behalf of the II accused/II petitioner placed orders for purchase of one "Lite Led Sign Board" valued at Rs.1,10,000/- According to the respondent/complainant, the said "Lite Led Sign Board" was manufactured and handed over to the accused as per their specifications and that the 1st accused issued three cheques bearing No.099163, 099164 and 099165 all drawn on IDBI Bank for Rs.1,10,000/-. These cheques were dated 07.10.2018, 14.10.2018 and 24.10.2018 respectively. When the cheques were presented for encashment by the respondent, they were dishonored for the reason "Account closed". Since the statutory notice dated 27.12.2008 evoked no response from the 1st and 2nd accused/1st and 2nd petitioner, he filed a complaint under Section 138 of Negotiable Instruments Act.

4. The primordial submission of Mr.S.Baskaran appearing for Mr.Ram and Ram, learned counsel for the petitioners is that the 1st petitioner did not issue any cheque in favour of the complainant and that the cheques do not contain the seal of the 2nd petitioner's firm. He would also contend that since the 1st accused is only a worker in the 2nd accused firm, he cannot be held liable in the absence of specific averments that the 1st accused was in charge of or responsible for the conduct of the business of the firm. He also pointed out that the 1st petitioner did not sign the cheques.

Section 141 of the Negotiable Instruments Act reads as under:-

> "(1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was incharge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
>
> Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.
>
> (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the

offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary of other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

5. The Honourable Supreme Court in S.M.S.Phamaceuticals Limited Vs. Netta Bhallen reported in (2005) 8 SCC 89 has held as follows:-

"18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.

This judgment was referred by the Honourable Supereme Court in Darga Ravi Vs. State of Rajasthan reported in (2015) 2 SCC 775.

6. Further, in Pooja Ravinder Devidasani Vs. State of Maharashtra and another, AIR 2015 SC 675, it was held in para 17 that

"There is no dispute that the appellant, who was wife of the Managing Director, was appointed as a Director of the Company M/s Elite International Private Limited. On 1st July, 2004 and ha also executed a letter of guarantee on 19th January, 2005. The cheques in question were issued during April 2008 to September, 2008. So far as the dishonor cheques are concerned, admittedly, the cheques were not signed by the appellant. There is also no dispute that the appellant was not the Managing Director but only a non-executive Director of the Company. Non-executive Director is no doubt a custodian of the governance of the company but does not involve in the day to day affairs of the running of its business and only monitors the executive activity. To fasten vicarious liability under Section 141 of the Act on a person, at the material time that persons shall have been at the helm of affairs of the company, one who actively looks after the day to day activities of the company and particularly responsible for the conduct of its business. Simply because a person is a Director of a Company does not make hm liable under the Negotiable Instruments Act. Every person connected with the company will not fall into the ambit of the provision. Time and again, it has been asserted by this court that only those persons who were incharge of and responsible for the conduct of the business of the company at the time of commission of an offence will be liable for criminal action. A Director, who was not incharge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence under Section 141 of the Negotiable Instruments Act.

In National Small Industries Corporation Ltd. Vs. Harmeet Singh Paintal and another reported in (2010) 2 SCC (Crl) 1113, it is held that

" Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is incharge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner respondent-1 was incharge of or was responsible to the accused company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are incharge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements under Section 141."

7. However, in the instant case, there is a specific averment in the complaint to the effect that the 1st petitioner representing the 2nd petitioner placed orders for purchase of goods and also issued three cheques. It is also to be pointed out that the petitioners though received the notice dated 27.12.2008 as is evidenced by the postal acknowledgments cards, did not issue any reply denying their liability. The celebrated judgment of the Honourable Supreme Court on Section 141 of the Negotiable Instruments Act in S.M.S. Pharmaceuticals Limited Vs. Neetta Bhalla and another (cited supra) dealing with vicarious liability for the offence under Section 138 of Negotiable Instruments Act explained the concept behind Section 141 of the Negotiable Instruments Act very categorically. It would be sufficient to refer to the relevant portion of the judgment on the point in issue:

> "10. While analyzing Section 141 of the Negotiable Instruments Act, it will be seen that it operates in cases where an offence under Section 135 is committed by a company. The key words which occur in the section as "every person". There are general words and take every person connected with a company within their seep. Therefore, these words have been rightly qualified by use of the words "who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence, etc."

What is required is that the persons who are sought to be made criminally liable under Section 141 of Negotiable Instruments Act should be, at the time of the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. "Every person" connected with the company shall not fall within the ambit of the provision. It is only those persons, who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a director of a company, who was not in charge of and not responsible for the conduct of business of the company at the relevant time will not be liable under the provision. The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time, when the offence was committed and not on the basis of merely holding a Designation or Office in a company. Conversely, a person not holding any office or designation in a company may be liable, if he satisfies the requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role played in the affairs of the company and not on designation or status.

8. In the instant case, as already observed, the complaint is very clear as to the role played by the 1st accused. The other allegations levelled by the petitioners are disputed facts. Inherent powers cannot be invoked to quash a complaint on a disputed questions of fact. Apart from this, the petitioners had already filed Crl.O.P.No.18955 of 2009 before this court under Section 482 Cr.P.C and the same was dismissed on merits on 08.09.2009. The present petition has been filed on the very same grounds. Thus, judged from any angle, the present petition fails and is therefore dismissed.

9. In the result, this Criminal Original Petition is dismissed. Consequently, connected criminal miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

mst

To

1. The XVII Metropolitan Magistrate,
Saidapet, Chennai.

2. The Chief Judicial Magistrate,
Egmore, Chennai 600 008.

+1cc to Mr.RAM AND RAM, Advocate, S.R.No. 26983
+1cc to Mr.V.NANDAKUMAR, Advocate, S.R.No. 27116

Crl.O.P.No.9156 of 2011

GJ(CO)
TR(04/05/2018)