

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.21526 of 2013

and M.P.No.1 of 2013

1.Mr.S.Narayan

Managing Director,
M/s.Enviro Pure Aqua Systems(P)Ltd.,
No.77, 18th Avenue,
Bhanu Nagar, Pudur,
Ambattur, Chennai 53.

2.Mrs.V.Madhuram,

Director,
M/s.Enviro Pure Aqua Systems(P)Ltd.,
No.77, 18th Avenue,
Bhanu Nagar, Pudur,
Ambattur, Chennai 53.

... Petitioners/Accused No.1-2

Vs

S.Malai Selvan

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in STC No 10 of 13 on the file of the learned Judicial Magistrate, Fast Track Court, Magisterial Level II, Poonamallee and quash.

For Petitioners : Mr.R.Ganesh Kumar
For Respondent : Mr.Ramesh Ganapathy
for M/s.Mission Legal

ORDER

This petition has been filed by the accused Nos.1 & 2 to quash the proceedings in STC.No.10 of 2013 on the file of the Fast Track Court - II(Magisterial Level), Poonamallee.

2. The respondent herein has filed a complaint against the petitioners herein stating that they have committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

3. The learned counsel for the petitioners has submitted that the respondent herein has admitted in the complaint that the cheque in question has been issued on behalf of the Company namely M/s.Enviro Pure Aqua Systems(P)Ltd., but the said company has not been impleaded as accused. He further submitted that the statutory notice was also not sent to the said company and without sending notice to the company and impleading the said company as accused, the Directors of the said company alone cannot be prosecuted. In support of the said contention, he relied upon the decision of the Hon'ble

Supreme Court in Aneeta Hada & Others vs Godfather Travels & Tours Pvt.Ltd & another, 2012(5)CTC 101.

4. The learned counsel for the petitioners further submitted that the respondent herein has admitted in the complaint that the cheque was returned on 09.07.2012 and with regard to the return of the said cheque, a statutory notice was issued only on 15.08.2012 i.e., after expiry of 30 days and on that ground also, the complaint is not maintainable. In support of the said contention, he relied upon the decision of the Hon'ble Supreme Court in Kamlesh Kumar vs. State of Bihar and Another, 2014 (1) CTC 329.

5. The learned counsel for the respondent, on the contrary, contended that in the reply notice, the petitioners herein have not denied the issuance of the cheque and their liability. He further, relying upon the decision of the Hon'ble Supreme Court in Anil Hada vs Indian Acrylic Limited, 1999 Supp(5)SCR 6 contended that there is no bar for proceeding against the Directors of the Company without impleading the company as accused.

6. He further submitted that the time limit fixed under the Act for sending notice is not mandatory and it is only a directory and as such, unless the accused established the prejudice caused to them, it cannot be said that the said notice is not valid in law. He further submitted that whether any prejudice was caused to the accused can be decided only after recording evidence and therefore, he prayed to dismiss this petition.

7. In Anil Hada vs Indian Acrylic Limited(Supra), the two judges Bench of the Honourable Supreme Court has held that merely because company has not been impleaded as accused, it cannot be said that the complaint is not maintainable against the other persons. But in the decision cited by the learned counsel for the petitioners i.e., in M/s.Aneeta Hada & Others vs Godfather Travels & Tours Pvt.Ltd & another.(supra) the three Judges Bench of the Honourable Supreme Court has specifically dealt with the decision in Anil Hada vs Indian Acrylic Limited(supra) and held in paragraph No.37 that the decision in Anil Hada vs Indian Acrylic Limited(supra)6 has to be treated as not laying down the correct law as far as it states that the Director or any officer can be prosecuted without impleadment of the company. Further the Honourable Supreme Court has held that for maintaining the prosecution under Section 141 of the Negotiable Instruments Act, assigning of a Company as an accused is imperative and without impleading the company as accused, the directors cannot be prosecuted.

8. In this case, admittedly the cheque in question has been issued by the petitioners herein on behalf of the company, but the said company has not been impleaded as an

accused. In view of the decision in Aneeta Hada & Others vs Godfather Travels & Tours Pvt.Ltd & another(supra) the proceeding against the petitioners herein in STC No.10 of 2013 is not maintainable.

9. Further, in paragraph No.2 of the complaint, it is stated that the cheque was returned by the Bank on 09.07.2012. In paragraph No.3 of the complaint, it is stated that the statutory notice has been issued on 15.08.2012. So it is clear that the statutory notice was issued after expiry of 30 days. In Kamlesh Kumar vs State of Bihar and Another (Supra), the Honourable Supreme Court has held that if the statutory notice is not sent within 30 days from the date of the information received by the complainant about the dishonour of the cheque, the complaint is not maintainable. In this case as already stated that the notice was not sent within 30 days from the date of return of the cheque. Hence the complaint is not maintainable on this ground also.

10. If the petitioners have admitted their liability as contended by the learned Counsel for the respondent, it is always open to the respondent to proceed against the company and also against its director under any other law. The criminal complaint filed under Section 138 of the Negotiable Instruments Act is not maintainable, in view of the aforesaid decisions of the Honourable Supreme Court.

11. Therefore, this petition has to be allowed. Accordingly this petition is allowed. The proceeding against the petitioners herein in STC. No.10 of 2013 on the file of the Judicial Magistrate (Fast Track No.2 Magisterial level No.2), Poonamallee is quashed.

12. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Fast Track Court,
Magisterial Level II,
Poonamallee.

<https://hcservices.ecourts.gov.in/hcservices/>

2.The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.R.Ganeshkumar, Advocate SR.No.60180
+1cc to M/s.Mission Legal Advocate SR.No.60202

MR(CO)
sm:10.10.2018

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