IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.26353 of 2010
and
M.P.Nos.1 and 2 of 2010

Leelakrishnan @ Neela Krishnan ... Petitioner

vs.

1.S.Saroja
2.Ponnusamy
3.Regunathan
4.Jyothi ... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.482 of 2006, on the file of the Learned Judicial Magistrate No.1, Tirupur and quash the same.

For Petitioner : Ms.A.B.Fathima Sulthana
For Respondents: Mr.R.Baskar (for R1)

JUDGMENT

It is the case of the petitioner that the 1st respondent herein filed a private complaint against the petitioner and the respondents 2 to 4 herein under Section 138 of the Negotiable Instrument Act, 1881, wherein the petitioner was arrayed as 2nd accused. According to the complainant/1st respondent herein, the 1st accused namely "M/s. Chaya Knitting Ltd." is a public Ltd., company, the accused 2 and 3 are its authorized signatories, the 4th accused is the Managing Director and the 5th accused is the Director and they are responsible persons for the conduct and day to day affairs of the said company. The accused had credits with the complainant by way of Hosiery Yarn. In the said business transaction the accused have to pay a sum of Rs.59,02,620/- to the complainant. For the above said amount due, the accused No. 2 & 3 have jointly signed and issued 3 cheques bearing Nos.021117, 021144, 021145 all dated 21.05.2005 for Rs.59,02,620/- payable to the complainant, on behalf of accused No.1, with the consent of accused No.4 & 5.

WEB COPY

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

2.The further case of the complainant/1st respondent herein is that the above said cheques were presented by her for collection was returned with an endorsement PAYMENTS STOPPED BY THE DRAWER. Hence she filed the above said complaint and the same was taken on file in C.C.No.482 of 2006 by the Learned Judicial Magistrate No.1, Tirupur. Challenging the same the petitioner herein/2nd accused is before this Court by way of this quash petition under Section 482 of Cr.P.C.

3.It is the case of the petitioner that he was appointed as Marketing Manager in the 1st accused company namely "M/s.Chaya Knitting Ltd." The petitioner was employed as an employee and was working for salary and has nothing to do with the business of the 1st accused company except signing the cheque as authorized signatory. In fact the petitioner resigned from the 1st accused company on 30.12.2004 itself and his resignation was also accepted and he was relived from the office on 30.12.2004 itself. The disputed cheque was issued to the 1st respondent herein only after the resignation of the petitioner and therefore he cannot be fastened with criminal liability for the issuance of alleged cheques. Further at the time of issuance of cheque the petitioner was not in-charge of and responsible for the conduct and affairs of the 1st accused company. Therefore, the offence under Section 138 of the Negotiable Instruments Act as against the petitioner is not maintainable and it would not constitute any offence and so it is liable to be quashed.

4.The other contention of the petitioner is that the signatures of the petitioner in the alleged cheques itself was fabricated one even after he was relieved from the service. The complaint against the petitioner has not fulfilled the terms and tenor of the Section 141 of Negotiable Instrument Act. Hence for all the above reasons, the petitioner prays to quash the above C.C.

5.I have heard M/s.A.B.Fathima Sulthana, learned counsel for the petitioner and Mr.R.Baskar, learned counsel for the 1st respondent and perused the records.

6.It is the first and foremost contention of the Learned Counsel for the Petitioner is that he was only an employee of the 1st accused company and was working for salary and therefore he has nothing to do with the business of the 1st accused company. That apart at the time of issuance of alleged cheques

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

he was not the employee of the 1^{st} accused company, since he resigned from the post on 30.12.2004 itself and the alleged cheques dated was 21.05.2005. Hence the petitioner was never in-charge of and responsible for the day to day conduct of the business of the 1^{st} accused company.

7.The other contention of the Learned Counsel for the petitioner is that even assuming without admitting the fact that he was working at the time of issuance of cheque, Section 141 second provisio clause would apply to his case which is reads as follows:

141. Offences by companies:-

i) [Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

8.The Learned Counsel for the petitioner would submit that as per the above said provisio clause if a person is nominated as a director of a company by virtue of his holding any office, he shall not be liable under this chapter. In the present case the petitioner was working as employee of the 1^{st} accused company and he was authorized to sign in the cheques of the company. Therefore the above said proviso would come into play in the present case on hand. Hence the Learned Counsel for the petitioner would contend that private complaint against by petitioner herein is liable to be quashed.

9.Per contra, the Learned Counsel for the 1^{st} respondent would contend that the documents relied on by the petitioner are private documents and the same are not public documents and therefore contented that the documents relied on by the petitioner cannot be looked into as they are private documents and the same being based on factual matrix which involves adducing evidence at the time of trial. The other submission of the Learned Counsel for the respondent is that the contention of the petitioner regarding his signatures were fabricated in the cheque after he was relived from the service is also a matter of trial and the same can be decided only after full-fledged trial. It is further contended that a bare reading of the complaint would itself establish a prima facie case against the petitioner herein for an offence under Section 138 r/w 141 of the Negotiable Instrument Act. The petitioner has not make out any

WEB COPY

case to quash the above private complaint and the same is liable to be dismissed.

10.The Learned Counsel for the respondent would draw the attention of this Court to the judgment reported in 2009 (10) SCC 48 in the case of K.K.Ahuja Vs V.K. Vora and Another. The said judgment deals with the issue of dishonor of cheque and offence by company.

11.This Court has carefully considered the rival submission on either side and this Court is of the considered opinion that this quash petition is liable to be allowed on the ground that the respondent/complainant has not made out a case so as to attract Section 141(ii) of the Negotiable Instrument Act. The present case would not fall under Section 141 (ii) of the Act, since there is no designation is mentioned in the complaint for the petitioner/2nd accused. In the complaint it is stated that the petitioner herein is an Authorized signatory of M/s. Chaya Knitting Ltd., Company. Therefore, Section 141 (ii) is not come into play and therefore the above judgment relied on by the respondent/complainant is not applicable to the facts of the present case on hand. In the said judgment it is also held that "If a mere reproduction of the wording of Section 141(1) in the complaint is sufficient to make a person liable to face prosecution, virtually every officer/employee of a company without exception could be impleaded as accused by merely making an averment that at the time when the offence was committed they were in charge of and were responsible to the company for the conduct and business of the company. That would be absurd and not intended under the Act. As the trauma, harassment and hardship of criminal proceedings in such cases, may be more serious than the ultimate punishment, it is not proper to subject all and sundry to be impleaded as accused in a complaint against a company, even when the requirements of Section 141 of the Act are not fulfilled."

12.In fact the above judgment is in favour of the petitioner herein. Therefore, in the considered opinion of this Court, the mere averment in the complaint that the accused No.2 and 3 are Authorized Signatories and are responsible persons for the conduct and day to day affairs of the company alone is not sufficient in the absence of specific averment with regard to the position and duties of the petitioner/2nd Accused in the company and his role in regard to the issuance of cheque.

13.This Court need not go into the other issues raised by

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

the respondent herein that the documents produced by the petitioner is a private document and it is not a public one and the same can be decided only at the time of trial.

14.In view of the foregoing reasons, I have no hesitation to quash the private complaint against the petitioner herein in C.C.No.482 of 2006 and accordingly quashed.

15.In the result, this Criminal Original Petition is allowed and the proceeding in C.C.No.482 of 2006 on the file of Learned Judicial Magistrate No.1, Tirupur is hereby quashed in so for as the petitioner/2nd accused alone. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Judicial Magistrate No.1,
Tirupur.

2. The Section Officer,
Criminal Section,
High Court, Madras-104 (2 Copies)

+3ccs to Mr.R.Baskar, Advocate, S.R.No.14
+2ccs to Ms.A.B.Fathima Sulthana, Advocate, S.R.No.87

Crl.O.P No.26353 of 2010
and
M.P.Nos.1 and 2 of 2010

CS/19/01/18

सत्यमेव जयते
WEB COPY
https://hcservices.ecourts.gov.in/hcservices/