IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.07.2018

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No. 16736 of 2018
And
Crl.M.P.No. 8636 & 8637 of 2018

Mr.Prem Behl .... Petitioner

Vs.

M/s. Rendington (India) Ltd.,
Rep. by Mr.M.Sundararajan
Senior Executive
SPL Guindy House
95, Mount Road
Guindy - 600 032
Chennai. .... Respondent

PRAYER Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records and quash the proceedings in C.C.No. 3644 of 2016 on the file of the Hon'ble XVIII Metropolitan Magistrate Court, Saidapet, in so far as the petitioner is concerned pending disposal of the above Crl.O.P.

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For Petitioner : Mr. Sai ***for M/s.Giridhar & Sai**

For Respondent : Mr.Narendran

O R D E R

It is the case of the complainant/M/s. Rendington (India) Ltd., that they are engaged in the business of distribution of computers and computer peripherals and related products for various multi-national companies; that the first accused/M/s. Sai Infosystem (India) Limited had purchased Wipro Computers and Monitors, IBM Software E- Licences, etc., for a period of time under various invoices, towards which a sum of Rs.4,58,84,065/- was due. Towards the said liability, M/s. Sai Infosystem (India) Limited /A-1 have issued the impugned cheque dated 15.07.2013 for Rs.4,58,84,065/- in favour of M/s. Rendington

(India) Ltd., /Complainant, which was presented on 15.07.2013 and the same was dishonoured for insufficiency of funds; that M/s. Rendington (India) Ltd., /Complainant has issued the statutory notice dated 10.08.2013 to M/s. Sai Infosystem (India) Limited /A-1 and to all its Directors, namely, A-2 to A-10; that the amount demanded in the notice was not paid and therefore, M/s. Rendington (India) Ltd.,/Complainant have launched a prosecution before the learned IX Metropolitan Magistrate, Saidapet, Chennai, in C.C.No. 3644 of 2016 under Section 138 of the Negotiable Instrument Act and the same is pending.

2. In the said complaint, there are ten accused including Prem Behl, who is the petitioner herein. Challenging the prosecution, Prem Behl/the petitioner herein is before this Court.

3. Heard Mr.Sai, learned counsel appearing for the petitioner and Mr.Narendran, learned counsel appearing for the respondent.

4. Mr.Sai, learned counsel appearing for the petitioner has made the following submissions that:-

(a) Prem Behl was only an independent Director: (b) the impugned cheque was admittedly issued on 15.07.2013. But however Prem Behl had resigned from the Company of the first accused on 17.05.2013. In support of this contention, a photocopy of Form No. DIR-12 has been submitted: (c) similar prosecutions were launched against Prem Behl by different complaints in Mumbai and Calcutta; the Mumbai and Calcutta High Courts have quashed the prosecutions on the ground that Prem Behl had resigned from M/s. Sai Inforsystem (India) Limited/A-1 on 17.05.2013 and therefore, he would not be liable: (d) the complaint lacks necessary averments as required under Section 141 of the Negotiable Instrument Act to fasten vicarious liability on Prem Behl. Reliance was placed on the Judgment of the Hon'ble Supreme Court in SMS Pharmaceuticals Vs. Neeta Bhalla and Anr. reported in (2005) 8 SCC 89; in National Small Industries Corp. Ltd., Vs. Harmeet Singh Paintal and Anor. reported in (2010) 3 SCC 330; and in Pooja Rvinder Devidasani Vs. State of Maharashtra reported in 2014 16 SCC 1.

5. Per contra, Mr.Narendran, learned counsel for the respondent refuted each of the above submissions and his contention will be discussed below:-

(a) It is true that Form DIR Nos.11 and 12, can be relied upon as unimpeachable document in a proceeding under Section 482 of Cr.P.C., to decide the issues arising under Section 138 of the Negotiable Instrument Act. Though in Form DIR No.12, the date of resignation of Prem Bhel has been shown as 17.05.2013, the date of acceptance by the Board of Directors is shown as 10.03.2016 and the website of Ministry of Corporate affairs show that it has been filed with ROC only on 10.06.2016. Thus in this case, the Form DIR No. 12 cannot be considered as an unimpeachable document of sterling quality to quash the proceedings on the ground that Prem Behl had resigned from the first accused Company on 17.05.2013.

(b) Coming to the two Judgments of the Calcutta and Mumbai High Court, there is no reference, to the above aspect in the said two Judgments.

(c) In the complaints filed in the two cases in Mumbai and Kolkatta, the complainant had not made the necessary averments that was required to fasten vicarious liability under Section 141 of the Negotiable Instrument Act. However, in this case, the complainant has averred in paragraph No. 3, 7, 8, 9 and 10 about the involvement of Prem Bhel in the transactions.

6. Mr.Sai, the learned counsel for the petitioner submitted that those averments are once again general in nature in as much as he has included A-3 to A-10 also along with A-2 and therefore, this Court should not place reliance upon those averments.

7. It is true that apart from the Company, there are nine accused in this case. If all the nine accused are actively involved in the day today affairs of the Company, the complaint will include them also as Accused. Just because, all of them have been referred to as persons, who had transacted the business with the complainant, this Court cannot give a finding that those averments are not worthy of acceptance.

8. The burden is on the complainant to adduce evidence to justify the averments in the complaint. If the complaint is lacking in averments, that can be good reason to quash the proceeding. However, when the complaint is replete with averments, it will be beyond the scope of this Court acting under Section 482 of Cr.P.C., to give a declaration that those averments are contrived and therefore, the prosecution should be quashed.

9. In SMS Pharmaceuticals supra, the issue before the Hon'ble Supreme Court was "whether the Director would be deemed to be in charge of and responsible to the Company for the conduct of the business of the company." In that context, the Hon'ble Supreme Court said that except Managing Director and Joint Managing Director, a Director will not be deemed to be in charge of and responsible to the affairs of the Company and that, the complainant must make the necessary allegations in the complaint.

10. In Pooja Ravinder Devidasani supra, the complainant had made one Parag Tejani and Hitesh Haria and also Pooja as accused. In that context, the Hon'ble Supreme Court held that the complainant knew that Pooja Ravinder Devidasani had resigned and in her place, Parag Tejani and Hitest Haria had been appointed as Directors and therefore, the Hon'ble Supreme Court quashed the prosecution as against Pooja Ravinder Devidasani. It may apposite it. Extract from Pooja Rvinder Devidasani case :-

> "It is settled law that to attract a case under Section 141 of the N.I. Act, a specific role must have been played by a Director of the Company for fastening vicarious liability. But in this case, the Appellant was neither a Director of the accused company nor in charge of or involved in the day to day affairs of the company at the time of commission of the alleged offence. There is not even a whisper or shred of evidence on record to show that there is any act committed by the appellant from which a reasonable inference can be drawn that the appellant could be vicariously held liable for the offence with which she is charged."

11. Pooja Ravinder Devidasani case has to be understood in the context in which the prosecution was laid. Thus, this Court is of the view that this is not a fit case to quash the prosecution at the threshold since there are prima facie allegations in the complaint against the petitioner.

12. In the result, this Criminal Original Petition is dismissed. However, the presence of the petitioner before the Trial Court is dispensed with on condition that the petitioner shall appear before the trial Court within a period of two weeks from the date of receipt of a copy of this order and execute a bond for Rs.10,000/- without sureties under Section 88 Cr.P.C. The petitioner shall engage an advocate on special Vakalat. The petitioner shall appear before the trial Court for questioning under Section 251 Cr.P.C., at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. For the other hearings, the petitioner shall file a petition before the trial Court under Section 317 Cr.PC., giving an undertaking that he will not dispute his identity and the same shall be considered and the presence of the petitioner/accused shall be dispensed with. The petitioner shall give an undertaking that

his counsel will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Crl) 288]. If the accused adopts any dilatory tactics, it is open to the trial Court to issue notice to his counsel on special Vakalat and insist upon his presence. If the accused absconds, the trial Court shall direct registration of an FIR against him under Section 229-A IPC. What is observed here is limited to decide the quash application and the trial Court shall proceed with the trial uninfluenced by what is stated above. The trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order, provided there is no legal impediment. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)
dt.11.8.2018

*Corrected as per letter given by the counsel for the petitioner
Sd/-
Assistant Registrar(CCC)
dt.30.8.2018

//True Copy//

Sub Assistant Registrar

TO

1. The XVIII Metropolitan Magistrate, Saidapet.

To be substituted to the order already despatched on 24.8.2018

+1cc to Mr.Giridhan & Sai, Advocate, S.R.No. 50542

Crl.O.P.No. 16736 of 2018
And
Crl.M.P.No. 8636 & 8637 of 2018

TR(13/08/2018)
sm:30.8.2018