IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P. RAJAMANICKAM

CRL.O.P.No.24900 of 2013
and
M.P.No.1 of 2013

1. R.Malarvizhi
2. R.Palanisamy

.. Petitioners

Vs

M.Periyaswamy

.. Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records pertaining to the proceedings in C.C.No.168 of 2013 pending on the file of the learned Judicial Magistrate -I, Tiruppur and to quash the same.

For Petitioners : Mr.D.R.Arun Kumar for Mr.Anandha Moorthy

For Respondent : No appearance

O R D E R

This petition has been filed by the accused Nos.3 and 4 to quash the proceedings in C.C.No.168 of 2013 on the file of the Judicial Magistrate No.1, Tiruppur.

2. The respondent herein has filed a private complaint under Section 138 of the Negotiable Instruments Act stating that the accused No.1 is a Partnership firm, the accused No. 2 to 4 are partners and responsible for the conduct of day-to-day affairs of the said firm. On 01.10.2011, the accused No.2 had borrowed a sum of Rs.5,00,000/- from the respondent by way of cash, as loan for his urgent family and business expenses and subsequently paid a sum of Rs.50,000/- on 16.06.2012 and Rs.25,000/- on 02.10.2012 and thereafter he has not paid any amount. In order to repay the balance amount of Rs.4,25,000/-, the accused No.2 has issued two cheques, one cheque dated 20.12.2012 for Rs.2,00,000/- and another cheque dated 26.12.2012 for Rs.25,000/-. The respondent has presented those cheques in the bank for collection on 21.12.2012 and 27.12.2012

respectively and they were returned on 22.12.2012 and 28.12.2012 respectively with the endorsements "Payment Stopped by the Drawer". Thereafter, he has issued a statutory notice on 02.01.2013. The notice which was sent to the accused Nos.1 and 3 were returned on 05.01.2013 and the notice which was sent to the accused Nos.2 and 4 were served on 05.01.2013. The accused persons did not make any payment within 15 days from the date of receipt of the said notice and hence he filed a private complaint against the accused persons under Section 138 of the Negotiable Instruments Act.

3. Based on the aforesaid complaint, the learned Judicial Magistrate No.1, Tiruppur has taken the case on file in C.C.No.168 of 2013 and the learned Judicial Magistrate has issued summons to the accused persons. After receipt of the summons, the accused Nos.3 and 4 have filed the present petition to quash the proceedings against them in C.C.No.168 of 2013 on the file of the Judicial Magistrate No.1, Tiruppur.

4. Though notice was served on the respondent, he has not appeared either in person or through counsel. Hence, after hearing the arguments of the learned counsel for the petitioner and perusing the records, the order is being passed.

5. The learned counsel for the petitioners has submitted that in the complaint, it is stated that the accused No.2 had borrowed the amount of Rs.5,00,000/- for his urgent family and business expenses and also stated that the accused No.2 alone had repaid a sum of Rs.50,000/- on 16.06.2012 and Rs.25,000/- on 02.10.2012 and nowhere it is stated that the Accused No.2 had borrowed the amount on behalf of the Accused No.1 (Firm) and in such a case, the petitioners herein cannot be prosecuted. He further submitted that in the complaint, it is stated that the second accused has issued the cheques on behalf of the Accused No.1 with the consent and connivance of Accused Nos.3 and 4. To substantiate the said allegation, the complainant has not produced any material. He further submitted that the complainant has simply stated in his complaint that the Accused Nos.2 to 4 are partners and responsible persons for the conduct and day to day affairs of the said firm, but he has not stated that at the time the offence committed and the petitioners herein (Accused Nos.3 and 4) were incharge of and responsible for the conduct of business if the Accused No.1 Firm and hence the complaint against the petitioners herein is not maintainable.

6. In support of the said contentions, he relied upon the decision in S.M.S.Pharmacueticals Ltd., /vs/ Neeta Bhalla and Another (2005) 8 SCC 89 wherein the Hon'ble Supreme Court in Paragraph No.19 has observed as follows:

" 19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the Office, they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141".

7. From the aforesaid decision of the Hon'ble Supreme Court, it is clear that it is necessary to specifically aver in a complaint under Section 141 that at the time, the offence committed, person accused was incharge of and responsible of conduct of the business of the company. In the case on hand, in the complaint, it is not specifically averred that at the time of

offence committed, the petitioners herein were incharge of, and responsible for the conduct of business of the accused No.1 (Firm). Therefore, the proceedings against the petitioners herein in C.C.No.168 of 2013 on the file of the Judicial Magistrate No.1, Tiruppur, has to be quashed.

8. In the result, this petition is allowed. The proceedings against the petitioners herein in C.C.No.168 of 2013 on the file of the Judicial Magistrate No.1, Tiruppur is quashed. Consequently, connected miscellaneous petition M.P.1 of 2013 is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vv
To

1. The Judicial Magistrate -I,
Tiruppur

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Anandhamurthy, Advocate, S.R.No.60293

CRL.O.P.No.24900 of 2013
and
M.P.No.1 of 2013

SS(CO)
GSP(30/10/2018)