IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2018

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Crl.O.P.No.28310 of 2012
and
M.P.No. 1 of 2012

Ashok Ramachandran ... Petitioner

Vs.

1.P.Damodharan

2.See Queen Shipping Service (Pvt) Ltd.,
Rep.its Managing Director,
S.Padmanabhan Sambasivam,
S/o.T.S.Sambasivam (Late),
No.1, Kapzi house,
Arunachalam 2nd Street, Adayar,
Chennai-600 0020.

3.S.Padmanabhan Sambasivam
4.S.Vasantha Sambasivam ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the complaint in C.C.No.472 of 2012, on the file of the Judicial Magistrate No.VI, Coimbatore and quash the same against the petitioner.

For Petitioner : Mr.G.Karthikeyan

For Respondents : M/s.S.Arivazhagan
Rajavelu for R1

: M/s. S.Karthikeyan
D.Sankar for R2 to R4

ORDER

The petitioner is the 4th accused in C.C.No.472 of 2012 on the file of the learned Judicial Magistrate No.VI, Coimbatore.

2. The first respondent/complainant filed a private complaint before the Judicial Magistrate No.VI, Coimbatore,

under Section 200 of Cr.P.C., against the present petitioner as well as three other accused, for the alleged offences punishable under Sections 138, 141 and 142 of the Negotiable Instruments Act.

3. The case of the first respondent/complainant is that the first accused Sea Queen Shipping Service (Pvt) Ltd., Company, is a clearing and forwarding agent and the second accused is the Managing Director of the said Company. The further contention of the respondent/complainant is that accused 2 to 4 who were the Directors of the first accused Company jointly approached the respondent/complainant and borrowed a sum of Rs.8,25,000/- on 15.02.2011 for the purpose of developing their business and agreed to pay the said amount together with interest at the rate of 12% per annum. According to the complainant, the accused 1 to 4 paid a sum of Rs.1,25,000/- by way of demand draft dated 31.03.2011 and promised to pay the balance amount within a period of five months.

4. Since no amount was forthcoming the respondent/complainant approached the accused and demanded them to pay the balance amount for which the accused issued a cheque bearing No.318380 dated 30.05.2012 for a sum of Rs.7,00,000/- drawn on Central Bank of India, Chennai main Branch, Chennai. When the respondent/complainant had presented the said cheque through his banker Viz., Axis Bank Ltd., Saibaba Colony Branch, Coimbatore, on 01.06.2012 the said cheque was returned for the reason "funds insufficient". Therefore, the respondent/complainant issued a legal notice dated 15.06.2012 to the accused and the accused sent reply notices which according to the respondent/complainant contained false allegations.

5. The present petitioner Mr.Ashok Ramachandran is arrayed as 4th accused in the complaint. The learned counsel appearing for the petitioner contended that the petitioner sent his resignation letter dated 18.12.2009 to the Managing Director, Sea Queen Shipping Service Pvt, (Ltd) Company and his resignation was also accepted by the Directors and it was duly incorporated in Form-32 issued in pursuant to Sections 303(2), 264(2) or 266(1)(a) and 266(1) (b) (iii) of the Companies Act, 1956. He also contended that the complainant has not averred in the complaint that at the time of the offence, the present petitioner was in charge of, and responsible for the conduct of the business of the Company and that the requirement of Section 141 has not been complied with by the respondent/complainant.

6. As far as the first ground is concerned, it is clear from Form-32 issued in pursuance of Sections 303(2), 264(2) or 266(1)(a) and 266(1) (b) (iii) of the Companies Act, 1956, that the petitioner ceased to be a Director of the first accused

Company with effect from 31.12.2009. The present cheque is alleged to have been issued on 31.05.2012 and so on the date of issuance of the cheque, the present petitioner was not a director in the first accused Company.

7. As far as the second ground is concerned, while analyzing Section 141 of the Negotiable Instruments Act, it will be seen that it operates in cases where an offence under Section 138 of the Negotiable Instruments Act, is committed by a Company. It is relevant to extract Section 141 of the Negotiable Instruments Act, which reads as follows:-

> "141. Offences by companies:- (1) If the person committing an offence under Section 138 is a company, every person who, at the time of 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 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:
>
> [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 of State Government of 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.] (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 or other officer of the company, such director, manager, secretary of other officer shall also be deemed to be guilty of that offence shall be liable to be proceeded against and punishable accordingly."
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> Explanation:- For the purpose of this Section,-
>
> (a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

8. The key word which occurs in the Section is “every person”. These are general words and take every person connected with a Company within their sweep. However, what is required is that the persons who are sought to be made criminally liable under Section 141 of the Negotiable Instruments Act, should be, at the time of the offence, in charge of and responsible for the Company and for the conduct of the business of the Company. Therefore, every person connected with the Company shall not fall within the ambit of the provision and 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, will be liable for criminal action. It follows from this that if a Director of a Company who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable under the provision.

9. The question of what should be the averment in a criminal complaint has come up for consideration before various High Courts in the Country and also before the Hon'ble Supreme Court. It was held by the Hon'ble Supreme Court in SMS Pharmaceuticals Limited Vs. Neeta Bhalla, (2005) 8 SCC 89, that,

> “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 Section 141 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.”

10. As far as the second ground is concerned, the petitioner is able to show that he was not a director on the date of the issuance of the cheque. Apart from that, the respondent/complainant has not averred in his complaint as to the role played by the petitioner/4th accused in the first accused Company. Absolutely, there are no averments to the effect that the petitioner was responsible for the conduct of the business of the Company on the date of the alleged transaction.

11. The cheque in question was issued on 30.05.2012 and admittedly, the cheque was not issued by the present petitioner. Though, it is contended by the respondent/complainant that the petitioner/4th accused is one of the directors of the first accused Company, he has not made specific averments as to the role played by him. Time and again, it has been asserted by the Hon'ble Supreme Court that only those persons who were in charge 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 in charge 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.

12. In view of all these reasons stated, I hold that the complaint filed against the present petitioner cannot be sustained and therefore, is liable to be quashed under Section 482 of Cr.P.C. However, the trial should go as far as the other accused are concerned. Since the complaint has been filed during the year 2012, the learned Judicial Magistrate No.VI, Coimbatore, is directed to dispose of the complaint within a period of three months from the date of receipt of a copy of this order.

13. With the above directions, the present Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

dna

To

1.The Judicial Magistrate No.VI,
Coimbatore.

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

+1cc to M/s.S.Arivazhagan, Advocate, S.R.No.36954

Crl.O.P.No.28310 of 2012
and
M.P.No. 1 of 2012

svn(co)
cs/27/06/18