

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CrI.O.P.No.26430 of 2018

and

CrI.M.P.No.15197 of 2018

M/s.Triumph Formulations Private Ltd.,
Rep by its Ex-Managing Director
H.Vikkrama
S/o.Harikaran
No.15/1221, First Floor
77th Street, 12th Sector
K.K.Nagar, Chennai-600 078 ... Petitioner

Vs.

- 1.Sri Sairam Pharma Distributor
Rep. By its Partner Mr.S.Vijayakumar
No.217, Perumal Koil Street
Alapakkam
Chennai-116.
- 2.The Official Liquidator,
High Court, Madras,
[As Liquidator of M/s.Triumph
Formulations Private Ltd.,]
(In Liquidation) ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to set aside the order passed by the learned Fast Track Court-III, Metropolitan Magistrate, Saidapet, Chennai in C.M.P.No.745 of 2018 in C.C.No.5010 dated 11.08.2018.

For Petitioner :Mr.K.Jayaraman

O R D E R

This petition has been filed aggrieved by the dismissal of the petition filed by the petitioner seeking to implead the Official Liquidator in order to represent the first accused Company under Section 138 complaint pending before the Court below.

2.It is seen from the records that the petitioner has been arrayed as A2 and he was the Managing Director of the first accused Company. The complaint under Section 138 of the Negotiable Instrument Act was filed by the first respondent in the year 2013 against the Company and the petitioner. During the pendency of the proceedings, the petitioner has filed the present petition seeking to implead the Official Liquidator to represent the Company. According to the petitioner, the Company has been wound up and the Official Liquidator has been appointed by this Court in C.P.No.121 of 2013, by order dated 31.10.2013. Therefore, according to the petitioner, by virtue of Section 446 of the Indian Companies Act, 1956, the Court below has to implead the Liquidator to represent the Company.

3.The Court below, while considering the petition, has taken note of the Judgment of the Hon'ble Supreme Court reported in 2000 (2) SCC page 756 and has held that merely because there is winding up petition against the Company, the penal liability under Section 138 of the Negotiable Instrument Act, cannot be avoided and it is an independent action irrespective of the fact where the company has been wound up or not.

4.The Court below has also taken into the consideration the judgment of the Andhra Pradesh High Court reported in 1999 (2) Crime Page 42, wherein it has been held that it is not necessary to obtain leave under Section 446 of the Companies Act, to proceed further with the criminal prosecution under Section 138 of the Negotiable Instrument Act. The Court below, therefore, found no merits in the petition filed by the petitioner seeking to implead the Official Liquidator to represent the accused company.

5.This Court does not find any ground to interfere with the order passed by the Court below. The Company is added as an accused in a 138 complaint only by virtue of the fact that the criminal liability of the Directors and the Officials of the Company is vicarious in nature. Therefore, no action can be brought against the Directors and the Officials of the Company, without adding the Company as an accused person, by virtue of the judgment of the Hon'ble Supreme Court reported in 2012 (5) SCC 661 wherein the Hon'ble Supreme Court held that without adding the Company as an accused, the Directors or the Officials cannot be prosecuted and such complaint cannot be maintained. Therefore, the Company is added as a party in the 138 proceedings only by virtue of the mandate provided under Section 141 of the Negotiable Instrument Act. Therefore, the fact that action has been taken to wind up the Company or an order has been passed for winding up the Company, will make no difference in a criminal proceedings initiated under Section

138 of the Negotiable Instrument Act. There is absolutely no requirement to take the leave of the Company Court, under Section 446 of the Companies Act, in order to proceed further with the criminal complaint under Section 138 of the Negotiable Instrument Act.

6. In this case, the petitioner who was the Managing Director of the Company had filed this petition seeking to implead the Official Liquidator to represent the Company. In the considered view of this Court, the petition filed by the petitioner is not sustainable in law. This Court does not find any illegality or infirmity in the order passed by the Court below and there is no ground to interfere with the said order.

7. In the result, the Criminal Original Petition is dismissed. The calendar case is of the year 2013. Therefore, the Court below is directed to complete the proceedings within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Metropolitan Magistrate,
Fast Track Court III,
Saidapet,
Chennai.
2. Do Through The Chief Judicial Magistrate,
Chennai.
3. The Official Liquidator,
High Court, Madras.

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CP(CO)
CSL/04.12.2018