



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

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CRL.O.P.(MD)No.15583 of 2017

and

Crl.M.P.(MD)Nos.10369 and 10370 of 2017

Leitwind Sriram Manufacturing Ltd.,
Rep. by its General Manager,
J.Sriram,
18/3, IV Floor, Sigapiachi Building,
Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.

: Petitioner / Accused No.1

-Vs-

R.Veeraputhiran

: Respondent / Complainant

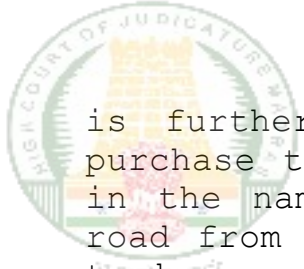
PRAYER: Criminal Original petition filed under Section 482 of Criminal Procedure Code, praying to call for the records pertaining to S.T.C.No.1186 of 2017 on the file of the Judicial Magistrate Court, Alangulam and quash the same as against this petitioner.

For Petitioners : Mr.T.Sakthikumaran

O R D E R

This petition has been filed to quash the proceedings in S.T.C.No.1186 of 2017 on the file of the Judicial Magistrate Court, Alangulam.

2.The petitioner is the first accused in the proceedings in S.T.C. No.1186 of 2017 on the file of the Judicial Magistrate Court, Alangulam. The respondent filed a complaint in S.T.C.No.1186 of 2017 on the file of the learned Judicial Magistrate Court, Alangulam under Section 142 of Negotiable Instruments Act read with Section 200 Cr.P.C. The case of the respondent is that the petitioner is a company represented by its General Manager, the second accused. The third and fourth respondents in the complaint are the authorised signatories of the company and the fourth respondent is the Executive Director of the company. It is further stated in the complaint that the petitioner had entered into two memorandum of agreement with respondent on 18.02.2012 for purchase of lands in and around Sivasankaranam, Vadiyur, Achankuttam, Mayamankurichi, V.K.Pudur, Thuthikulam, Nettur, Ayyanarkulam and Sivalarkulam in Tirunelveli District for erection of 34 numbers of windmills. It



is further stated that the respondent herein was required to purchase the lands from third parties to get the same registered in the name of company and that the respondent should also lay road from pathway to reach every point in which the windmill has to be erected and to erect electricity poles in all the points. It is further stated that pursuant to the agreement, the respondent has spent an amount of Rs.35,41,09,557/-. Whereas, the petitioner has paid only a sum of Rs.32,57,39,342/-. It is in connection with the transaction and towards the amount payable by the petitioner, the respondent states that the accused Nos.3 and 4 being the authorised signatories of the company, issued two cheques of Punjab National Bank signed by them each for a sum of Rs.25,00,000/- bearing dates 05.05.2017 and 25.05.2017. It is further stated in the complaint that on the instructions of the petitioner herein, the respondent deposited the cheques in his account in Indian Bank, Alangulam Branch on 26.05.2017 but the cheques were dishonored for the reason "payment stopped by the drawer". It was thereafter the respondent issued a legal notice on 30.06.2017 calling upon the petitioner and other accused to repay the said amount of Rs.50,00,000/- within a period of 15 days. Since the amount was not paid, it is stated that the complaint in S.T.C. No.1186 of 2017 was filed before the learned Judicial Magistrate Court, Alangulam. The petitioner company represented by its General Manager by name J.Sriram, the first accused, has filed this petition to quash the proceedings in S.T.C. No.1186 of 2017 on the file of the learned Judicial Magistrate Court, Alangulam against the petitioner.

3.The learned counsel for the petitioner refers to the reply notice issued on behalf of the petitioner and other accused and submitted that the cheques were issued only as a security not towards any amount payable to the respondent. The learned counsel for the petitioner then submitted that the petitioner is only a General Manager-Infrastructure Development and that he was authorised only for purchasing land or to take land on lease for the windmill project to be set up in Tirunelveli District and to sell the energy to their customer, namely, Neively Lignite Corporation Ltd. Since the petitioner was neither authorised to make payment for purchase of land at any point of time, the complaint showing him as the authorised representative of the company is not maintainable. Though it is admitted by the learned counsel for the petitioner that in the memorandum of agreement the General Manager, namely, the second accused has signed on behalf of the petitioner, it is contended that the complaint mentioning the petitioner as a representative of the company is wrong as Board of Directors alone are empowered to take decisions. It is also submitted that the petitioner cannot be wholly held responsible for the entire act of the company and make vicariously liable for the commission of offence just because he has acted in the company as General Manager (Windmill Development). The learned counsel for the petitioner further submitted that under

Section 141 of the Negotiable Instruments Act only the person on whose direction the payment is made by cheque is vicariously liable for commission of offences.

4. Relying upon the judgment of the Hon'ble Supreme Court in K.K.Ahuja v. V.K.Vora and another reported in (2009) 10 SCC 48, it is submitted that the General Manager of the company cannot be held vicariously liable for the commission of offence when the General Manager has acted only upon the direction of the Board of Directors of the company or other higher authorities of the company. It is further stated by the learned counsel for the petitioner that the petitioner has also given a complaint against the respondent on 04.06.2017 before the Superintendent of Police, Tirunelveli for stealing the petitioner's cheque book in relation to the petitioner's AXIS Bank account and for forging the petitioner's signature in four cheque leaves for an amount of Rs.50,00,000/- each. It is further stated that the present complaint filed by the respondent is only with a sole motive to wreck vengeance against the petitioner.

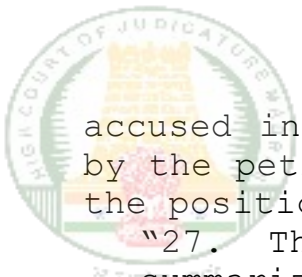
5. It is to be noted that the two cheques were issued by the company signed by the authorised signatories. It is stated in the complaint that the respondents 3 and 4 in the complaint have signed as the authorised signatories of the petitioner company. In the complaint, the fourth respondent is described as the Executive Director and authorised signatory of the company. It is not the case of the petitioner that the cheques were not issued by the company. It is to be noted further that the transaction relating to purchase of lands in the name of company was only between the petitioner and the respondent. In the memorandum of agreement entered into between the petitioner and the respondent, the second accused namely the General Manager of the company has signed as the General Manager representing the company. The petitioner represented by the General Manager is the person who has agreed to release payments to the respondent as per the terms agreed between the parties. The cheque was stated to have been issued only in connection with the agreement that was entered into between the petitioner company represented by its General Manager and the respondent. The learned counsel for the petitioner produced before this Court the resolution of the Board of Directors of the company held on 3rd September, 2008 showing that the General Manager (Infrastructure Development) is authorised to negotiate with the vendors sign all the documents / papers, appoint or authorise any person or authority to do any or all of the above acts / things on his behalf. It is stated that the said authorisation is not for making payment and that therefore, the petitioner is a General Manager and the complaint is not maintainable as against the General Manager or against the company or against the General Manager. Since the authorisation given to the General Manager was not extended to make payment it is argued that the General Manager cannot be held vicariously liable.

To support his submission, the learned counsel for the petitioner relied upon paragraphs 25 and 30 of the judgment of the Hon'ble Supreme Court in the case of K.K.Ahuja's case (cited supra), which is extracted as follows:

"25. It should, however, be kept in view that even an officer who was not in charge of and was responsible to the company for the conduct of the business of the company can be made liable under sub-section (2) of Section 141. For making a person liable under Section 141(2), the mechanical repetition of the requirements under Section 141(1) will be of no assistance, but there should be necessary averments in the complaint as to how and in what manner the accused was guilty of consent and connivance or negligence and therefore, responsible under sub-section (2) of section 141 of the Act.

30. A Deputy General Manager is not a person who is responsible to the company for the conduct of the business of the company. He does not fall under any of the categories (a) to (g) listed in section 5 of the Companies Act (extracted in para 14 above). Therefore the question whether he was in charge of the business of the company or not, is irrelevant. He cannot be made vicariously liable under Section 141(1) of the Act. If he has to be made liable under Section 141(2), the necessary averments relating to consent/connivance/negligence should have been made. In this case, no such averment is made. Hence the first respondent, who was the Deputy General Manager, could not be prosecuted either under sub-section (1) or under sub-section (2) of Section 141 of the Act."

6. In this case, the complaint was lodged as against the company represented by the General Manager as it is he who had entered into the memorandum of agreement with the respondent and hence, the contention of the petitioner that the complaint is not maintainable as the complaint has been filed against the petitioner represented by General Manager, cannot be accepted. It is only the General Manager who has represented the company while entering into the agreement with the respondent and therefore, the contention of the petitioner's counsel has no merits. Further, in this case, the complaint clearly refers to the role of the General Manager as an authorised representative of the company in entering into the transactions relating to the purchase of the lands for the company and with regard to every act in connection with the purchase of the lands. It is further to be noted that the petitioner and other accused have sent a reply to the legal notice that was issued on behalf of the respondent. In the reply notice, except stating that the cheques were issued only as security for payment to be made by Neyveli Lignite Corporation pursuant to the demand, the petitioner has not raised any objection. The petitioner received legal notice wherein the company was shown as an entity represented by its General Manager who is the second



accused in the complaint. In the judgment which was relied upon by the petitioner the Hon'ble Supreme Court has further summarised the position of law thus:

"27. The position under section 141 of the Act can be summarized thus :

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(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix 'Managing' to the word 'Director' makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(iii) In the case of a Director, Secretary or Manager (as defined in Sec. 2(24) of the Companies Act) or a person referred to in clauses (e) and (f) of section 5 of Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under section 141(1). No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other Officers of a company can not be made liable under sub-section (1) of section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, be averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence."

7. It is to be noted that the company as such is an accused in the complaint. The petitioner is only the company represented by its General Manager. The other respondents in the complaint including the General Manager in his individual capacity have not



challenged the proceedings on the ground that they cannot be held liable under Section 141 of the Negotiable Instruments Act. Hence, reference to the judgment of the Hon'ble Supreme Court by the learned counsel for the petitioner is of no use having regard to the facts in this case.

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8. In the above circumstances, this Court is convinced that the contention of the petitioner in this petition has no merits and the petitioner has come forward with this petition only to delay the proceedings with ulterior motive. Inasmuch as the General Manager of the petitioner company has not raised any objection regarding the maintainability of the complaint, this Court is also of the view that the judgment relied upon by the learned counsel for the petitioner has no application to the case on hand. In view of the nature of transaction between the petitioner and the respondent and the admitted facts this Court is of the view that there is no bona fides in this petition. Hence, this Criminal Original Petition is liable to be dismissed with costs. As a result, this Criminal Original Petition is dismissed with costs of Rs.10,000/- (Rupees ten thousand only) payable to the credit of the Chief Justice Relief Fund, within a period of two weeks from the date of receipt of a copy of this order. Consequently, the connected criminal miscellaneous petitions are closed.

Post this matter for reporting compliance after two weeks from the date of issuance of a copy of the order.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate Court, Alangulam.
2. Do through Chief Judicial Magistrate, Tirunelveli.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court, Madurai.
5. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.
(For posting the matter)

+1cc to M/S.T.Sakthikumaran, Advocate SR.No. 87676

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