BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.[MD]No.6739 of 2018

and

Crl.M.P.[MD]Nos.3207 & 3208 of 2018

Deva Rajan Elaya Valli : Petitioner / 4th accused

Vs.

M/s.Bhima Jewellery,
A Partner ship forms
Rep. by its Power of Attorney,
Internal Auditor,
Mr.G.Veeraputhiran,
No.137, West Masi Street,
Madurai - 625 001.
(Vilakkuthoon Police Station Limit) : Respondents / Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for records relating to S.T.C.No.546/2015 on the file of the Hon'ble Judicial Magistrate Cum Fast Track Court No.I, Madurai and quash the same.

For Petitioner : Mr.Suresh Kumar
For Respondents : No appearance

O R D E R

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This petition has been filed to quash the proceedings in S.T.C.No.546 of 2015, on the file of the Judicial Magistrate Cum Fast Track Court No.I, Madurai.

2.The petitioner is arrayed as A4 in the complaint. The respondent is the complainant in the said complaint and in spite of service and the name printed in the cause list, the respondent is neither represented by a Counsel nor is present in person.

3.The respondent has filed the complaint against A1 which is a Company and A2 and A3 who are Managing Director and Director respectively and as against the petitioner, who is shown to be the Additional Director of the Company.

4.The case of the respondent is that he is running a Jewelry shop and the accused persons approached the respondent for supply of Gold and towards the said supply, the respondent had advanced certain amounts. Towards this amount that was advanced, a post-dated cheque was issued by the first accused Company which got dishonoured. Thereafter, statutory notice was issued and since the cheque amount was not paid by the accused persons, the complaint came to be filed.

5.The learned Counsel for the petitioner has raised two primary contentions namely,

a)The petitioner is admittedly an Additional Director and therefore, in order to make him liable, the requirement of Section 141 of the Negotiable Instruments Act will have to be fulfilled and there must be a specific averment in the complaint that the petitioner at the time of committing, was incharge of and was responsible to the Company for the conduct of the business of the Company. The only allegation that has been made against the petitioner in the complaint is a bald statement to the effect that accused 2 to 4 are responsible for conduct of the business of the first accused Company.

b)The cheque in this case is dated 06.05.2015 and the same was presented in the Bank by the respondent on 03.08.2015 and the same was dishonoured and returned on 04.08.2015.

5.1.The petitioner has placed before Court the Form 32 as recorded before the Ministry of Corporate Affairs, wherein it is found that the petitioner was appointed as an Additional Director only on 03.07.2015. Therefore, the learned Counsel would contend that as on the date when the cheque was issued by the first accused Company, the petitioner was not even the Additional Director of the first accused Company.

6.Insofar as the first contention that has been raised in this case, it is by now a settled law that in case of a Additional Director, the complaint should specifically state how and in what manner the Additional Director was incharge of and responsible for the conduct of the business of the Company and a mere bald statement that he is incharge of and responsible for the day today affairs of the Company is not sufficient. The only exception that has been drawn in cases of this nature is where the accused concerned is a Managing Director or a Joint Director or a whole-time Director or a Signatory Director, in which case, such an averment need not be made even in the complaint. A vicarious liability must be pleaded and proved and it should not be inferred. In the present case, there is absolutely no averment in the complaint as to how and in what manner the petitioner was incharge of and responsible for the conduct of the business of the Company.

7.The learned Counsel for the petitioner has placed before this Court an incontrovertible and an unimpeachable evidence to the effect that on the date when the cheque was issued by the first accused Company, he was not even an Additional Director in the Company. Such unimpeachable evidence can be taken into account by the Court even while deciding an application to quash the proceedings under Section 482 of Cr.P.C.

8.In view of the above findings, the petitioner is bound to succeed in this petition and accordingly, the proceedings in S.T.C.546 of 2018 on the file of Judicial Magistrate Cum Fast Track Court No.I, Madurai is quashed insofar as the petitioner is concerned. It is made clear that the proceedings can go on insofar as the other accused persons are concerned. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-II)

MR

To
1.The Judicial Magistrate Cum Fast Track Court No.I,
Madurai.

+1cc to Mr.S.Suresh Kumar, Advocate in SR No.80177

Crl.O.P.[MD]No.6739 of 2018

NM/RSK/SAR 2/28.09.18/3P/3C