



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WEB COPY

CrI.O.P.(MD).No.2857 of 2016

and

CrI.M.P.(MD).No.1392 of 2016

C.Senthil Kumar

...Petitioner / Accused

Vs.

K.Malaichamy

... Respondent / Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in S.T.C.No.805 of 2012, pending on the file of the learned Judicial Magistrate, Melur and quash the same.

For Petitioner

:Mr.B.Mohan

for Mr.P.Sidharthan

For Respondent

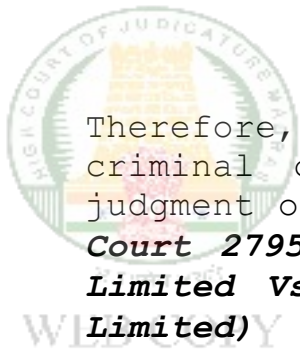
:Mr.M.Balakrishnan

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.805 of 2012, pending on the file of the learned Judicial Magistrate, Melur.

2.The petitioner is an accused facing proceedings under Section 138 of the Negotiable Instruments Act. The respondent has filed a complaint before the Court below on the ground that the petitioner borrowed a sum of Rs.1,00,000/- from the respondent on 11.11.2011 and had issued a cheque dated 05.01.2012. When this cheque was presented, the same was returned on 29.03.2012 with an endorsement "In sufficient funds". Thereafter, a statutory notice was issued to the petitioner and since the petitioner did not pay the cheque amount, a complaint came to be filed before the Court below for an offence under Section 138 of the Negotiable Instrument Act.

3.The learned counsel appearing for the petitioner would submit that admittedly, the cheque was issued by M/s.Shantha Alloys Private Limited, represented by its Director. The petitioner has signed a cheque in his capacity as the Director of the company. The learned counsel appearing for the petitioner brought to the notice of this Court, the statutory notice issued by the respondent as well as the complaint filed by the respondent and pointed out that no notice was issued to the Company and the Company has not been made as an accused in the complaint.



Therefore, the learned counsel would further submit that the criminal complaint itself is not maintainable in view of the judgment of the Hon'ble Supreme Court reported in **AIR 2012 Supreme Court 2795- (Aneeta Hada v. M/s.Godfather Travels & Tours Private Limited Vs. Anil Hada v. M/s.Godfather Travels & Tours Private Limited)**

4.The learned counsel appearing for the respondent would submit that it is a fact that the petitioner had borrowed a sum of Rs.1,00,000/- and had issued a cheque in the name of the Company. The petitioner is now taking a technical plea that the Company has not been made as an accused in the complaint and he is trying to escape from the liability. The learned counsel appearing for the respondent would further submit that even if the Court is to hold that the complaint is not maintainable, that should not stand in the way of the respondent to work out his remedies against the petitioner to recover the money in accordance with law.

5.This Court has carefully considered the submissions made on either side. The case on hand is squarely covered by the judgment of the Hon'ble Supreme Court referred supra. It will be relevant to extract the following passages from the above judgment.

"43.In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a Company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V.Parekh, (AIR 1971 Sc 447) (supra) which a three Judge Bench decision. Thus, the view expressed in Sheoratan Agarwas, (AIR 1984 SC 1824) (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada, (AIR 2000 SC 145: 1999 AIR SCW 4228) (supra) is overruled with the qualifier as stated in paragraph 37. The decision in Modi Distilleries, (AIR 1988 SC 1128) (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove.

48.Keeping in view the anatomy of the aforesaid provision, our analysis pertaining to Section 141 of the Act would squarely apply to the 2000 enactment. Thus adjudged, the director could not have been held liable for the offence under Section 85 of the 2000 Act. Resultantly, the Criminal Appeal No.1483 of 2009 is allowed and the proceeding against the appellant is quashed. As far as the company is concerned, it was



not arraigned as an accused. Ergo, the proceeding as initiated in the existing incarnation is not maintainable either against the company or against the director."

6. In view of the above, the complaint filed before the Court below is not maintainable and the same is liable to be quashed. In the result, the proceedings in S.T.C.No.805 of 2012, on the file of the learned Judicial Magistrate, Melur, is hereby quashed. Accordingly, the Criminal Original Petition is allowed. However, it is made clear that if the respondent is otherwise entitled to proceed against the petitioner in accordance with law, he may do so, if so advised. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl Side)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Judicial Magistrate, Melur.

+1cc to Mr.M.Balakrishnan, Advocate Sr.No.91494

+3cc to Mr.M.Mohanasundaram, Advocate Sr.No.91402

TSG

VB/SKN/SAR1/26.11.2018/3P/6C

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