BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.02.2018

Delivered on : 26.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)No.527 of 2013
and
M.P.(MD)No.1 of 2013

1.Preetha
2.Pushpam ... Petitioners

Vs.

M/s.Raju Chettiar
A Partnership Firm,
Represented by the Power of Attorney,
Mr.R.Rajuchettiyar,
S/o.R.Ragavanchettiyar,
D.No.1213, Periyakulam Road,
Theni. ... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the case in S.T.C.No.53 of 2011 on the file of the Fast Track Court (J.M. Level), Theni and quash the same.

For Petitioners : Mr.C.Vakeeswaran

For Respondent : Mr.S.Venkatesh
for Mr.A.Sivaji

ORDER

This Criminal Original Petition has been filed to quash the proceedings relating to S.T.C.No.53 of 2011, pending on the file of the Fast Track Court (J.M. Level), Theni.

2.The petitioners herein are Accused Nos.3 and 4 in S.T.C.No.53 of 2011 on the file of the Fast Track Court (J.M. Level), Theni. The respondent - M/s.Raju Chettiar Firm filed a private complaint against the petitioners and two others under Section 138 r/w. 142 of the Negotiable Instruments Act, 1881 [hereinafter referred to as 'the Act'], in which, he made an allegation as the cheque issued by the first accused company in favour of the respondent/complainant was dishonoured as insufficient funds and thereby, being the Directors the petitioners herein are also to be held responsible for the offence punishable under Section 138 of the Act.

3.Admittedly, the respondent Firm is a Partnership Firm. The impugned cheque was issued by the Managing Director P.K.Mahamuni on behalf of M/s.Sri Karuv Spinners (P) Ltd. The said Company is incorporated under the Companies Act and carrying on business at No.35/94, Sasthanivas, Mangalam Road, Thirunagar, Thiruppur. As per the case of the petitioners, one P.K.Mahamuni in the capacity of Managing Director looking into the day-to-day affairs of the Company, issued a cheque in favour of the respondent in the course of business transaction. Subsequently, due to dishonour of the cheque, the respondent filed the complaint against four accused, in which, the petitioners are arrayed as A3 and A4.

4.The first and foremost contention raised by the petitioners is that on the date of issuance of cheque, the petitioners herein are not having the position of Directors of M/s.Sri Karuv Spinners (P) Ltd. and the cheque was issued by the Managing Director himself without the knowledge of the petitioners. Accordingly, the petitioners have not committed any offence. Without noting that aspect, the learned Judicial Magistrate, Fast Track Court, Theni, took cognizance against the petitioners and thus, the same was liable to be quashed.

5.On the other hand, the learned counsel appearing for the respondent made his submission as on the date of issuance of the cheque, the first petitioner herein is holding the post of Director and hence, the contention raised by the petitioners is not at all relevant and the relief sought by the petitioners is not having any merit.

6.Now, on going through the complaint given by the respondent, it seems that the alleged cheque, bearing No.121883, dated 05.11.2002, for Rs.3,62,964/- was presented for collection through the Lakshmi Vilas Bank Ltd., Theni, on 24.02.2003 and subsequently, after dishonour, the said fact was intimated to the respondent Firm/complainant Firm on 26.02.2003. In the above circumstances, it is necessary to find out whether the first and second petitioners are having the position of Directors on the date on which the cheque was issued. In this aspect, in order to show their *bona fide*, the petitioners have produced the Registration Certificate of the Firm before this Court. On going through the particulars available in the Registration Certificate, it seems that the Firm was registered on 09.07.2001 and the Registrar of Companies has also issued a certified copy under Section 610 of the Companies Act, 1956, on that date, one P.K.Mahamuni and the first petitioner herein are the Directors of Sri Karuv Spinners Private Ltd. Thereafter, on 09.07.2001, Form-32 was submitted to the Registrar of Companies for removing the first petitioner's name. The said proposal was accepted by the Registrar of Companies on 11.07.2001 and prior to that, the same Form-32 is assigned with Serial No.4 on 26.07.2001. Except those particulars, the name of the second petitioner is not added as a Director in the Certificate of Incorporation. So, according to the case of the petitioners, the first petitioner was retired from the post of Director from 01.04.2002 itself. Since the first petitioner was retired from the post of Director, one K.Boominathan was admitted for the post of Director. In the meanwhile, the alleged cheque was issued prior to 01.04.2002. Now, the contention raised by the petitioners that the first petitioner was retired from the post on 15.11.2002 or on 01.04.2002, is a matter for evidence. Without examining the witnesses from the Registrar of Companies, as of now, this Court cannot come to the conclusion that the first petitioner was retired from the post of Director in the year 2001 itself. So, only after knowing the abovesaid fact, this Court comes to the conclusion as to whether the first petitioner is liable for the charges levelled against her or not. In general, in a petition filed under Section 482 Cr.P.C., factual aspects cannot be discussed.

7.In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court in Ajay Kumar Das Vs. State of Jharkhand and another reported in 2011 (12) SCC 319, wherein it has been held as follows:

> ''15. ..... allegations will have to be dealt with by the court at different stages for which liberty would be available to the appellant. In our considered opinion, this is not the stage when the court would make an inquiry into the factual position to find out as to whether or not the appellant is guilty of the charges or not. The appellant, in our considered opinion, will have sufficient opportunity to place his entire case before the Court at the time of framing of the charge since charge-sheet had already been filed against the appellant also holding that a case under Section 304-B and Section 34 is made out. We do not wish to enter into the factual details for any discussion on them at this stage as the same may prejudicially affect the case of the appellant.''

8.So, as per the abovesaid judgment of our Hon'ble Supreme Court, factual aspects can be discussed only during the time of trial and not in a petition filed for quashing the case. Accordingly, this Court comes to the conclusion that the prayer sought by the first petitioner is not at all maintainable and the prayer sought by the second petitioner is maintainable.

9.Further, in a case filed under Section 138 of the Act, the complainant has to prove the day-to-day affairs of each and every Directors. Actually, the involvement in the process of issuing a cheque is necessary for constituting the offence under Section 138 of the Act, for which, the learned counsel appearing for the petitioners relied on a judgment of the Hon'ble Supreme Court in Anita Malhotra Vs. Apparel Export Promotion Council and another reported in IV (2011) BC 665 (SC), wherein at Paragraph No.15, it has been held as follows:

> ''15.This Court has repeatedly held that in case of a Director, complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the accused Company for conduct of its business and mere bald statement that he or she was in charge of and was responsible to the company for conduct of its business is not sufficient. [Vide National Small Industries Corporation Limited Vs. Harmeet Singh Paintal and another, 2010 (3) SCC 330]. In the case on hand, particularly, in para 4 of the complaint, except the mere bald and cursory statement with regard to the appellant, the complainant has not specified her role in the day-to-day affairs of the Company. We have verified the averments as regard to the same and we agree with the contention of Mr.Akhil Sibal that except reproduction of the statutory requirements the complainant has not specified or elaborated the role of the appellant in the day-to-day affairs of the Company. On this ground also, the appellant is entitled to succeed.''

10.However, in the case on hand, the respondent/complainant has to prove whether the petitioners are directly involved in the day-to-day affairs of the Company or not. In the above circumstances, this Court is inclined to quash the proceedings relating to S.T.C.No.53 of 2011, pending on the file of the Fast Track Court (JM Level), Theni, in respect of the second petitioner alone. Accordingly, this Criminal Original Petition is allowed in respect of the second petitioner alone and the proceedings in S.T.C.No.53 of 2011, pending on the file of the Fast Track Court (JM Level), Theni, in respect of the second petitioner alone, shall stand quashed. Insofar as the first petitioner is concerned, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar

To

The Judicial Magistrate,
Fast Track Court,
Theni.

+1cc to Mr.C.VAKEESWARAN,Advocate,SR. 51147

Crl.O.P.(MD)No.527 of 2013
26.02.2018

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