

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.01.2019

CORAM
THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.15365 of 2013
and M.P.No.1 of 2013

Mrs.Meenakshi Ramji

Director,

M/s.Sowparnika Projects and Infrastructure Pvt, Ltd.,

No.1201, Dictionary Block,

AECS Lay out,

Kundalahalli,

Bangalore - 37.

...Petitioner/Accused

Vs.

G.Parthasarathy

S/o. Late N.Gopal,

Door No.34, GKD Nagar,

Pappanaickenpalayam,

Coimbatore - 641 037.

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings in C.C.No.97 of 2013, on the file of the Judicial Magistrate No.3, Coimbatore.

For Petitioner : Mr.Adithya Varadarajan
For M/s.C.Usha

For Respondent : No appearance

O R D E R

This Petition has been filed by the accused to quash the proceedings against her in C.C.No.97 of 2013, on the file of the Judicial Magistrate No.3, Coimbatore.

2. The respondent herein has filed a private complaint stating that the petitioner herein is the Director of the Company viz., M/s.Sowparnika Projects and Infrastructure Private Limited. He further stated that the petitioner owed a sum of Rs.13,32,959/- to the complainant in a money transaction between them. He further stated that in order to discharge the aforesaid debt, the petitioner herein issued a cheque bearing No.078211 dated 19.03.2012 for a sum of Rs.13,32,959/- and when the said cheque was presented in the bank for encashment, on 22.03.2012 the said cheque was returned with an endorsement

'Payment stopped by the drawer''. He further stated that after receipt of the memo from the bank with regard to the dishonour of cheque, he has issued a statutory notice to the petitioner herein on 04.04.2012 and the petitioner herein has received the said notice dated 09.04.2012 but, she failed to pay the amount within 15 days and hence, he was constrained to file the complaint against the petitioner herein to punish her under Section 138 of the Negotiable Instruments Act.

3. Based on the said complaint, the learned Judicial Magistrate No-3, Coimbatore, has taken the case on file in C.C.No.97 of 2013 and issued summons to the petitioner herein. On receipt of the summons, the petitioner has filed the present petition under Section 482 of Cr.P.C. to quash the proceedings against her.

4. Though the respondent's name and his counsel name have been printed in the cause list, neither the respondent nor his counsel appeared. Hence, after hearing the arguments of Mr. Adithya Varadarajan, the learned counsel for the petitioner and perusing the records, order is being passed in this petition.

5. The learned counsel for the petitioner has submitted that the cheque was issued on behalf of company viz., M/s. Sowparnika Projects and Infrastructure Private Limited but without impleading the said Company as an accused, the respondent has filed a private complaint against one of the Directors alone i.e., the petitioner herein. He further submitted that the statutory notice also not sent to the said Company. He further submitted that the prosecution against the petitioner herein without arraigning of a Company as an accused is not maintainable. In support of the said contention, he relied upon the decision in ANEETA HADA vs. GODFATHER TRAVELS & TOURS (P) LTD. (2012) 5 SCC 661.

6. Since neither the petitioner and nor the respondent produced a copy of the said cheque, this Court has called for a xerox copy of the entire case bundle in C.C.No.97 of 2013 on the file of the learned Judicial Magistrate No-III, Coimbatore. The learned Judicial Magistrate No-3, Coimbatore, has sent a xerox copy of the entire case bundle.

7. A perusal of the xerox copy of the said cheque shows that the said cheque was signed by the petitioner herein as authorized signatory for M/s. Sowparnika Projects and Infrastructure Private Limited. So, it is clear that the said cheque was issued by the petitioner only on behalf of the Company. But, the said company has not been added as an accused. The contention made by the learned counsel for the petitioner is that the statutory notice also not sent to the said Company.

8. In ANEETA HADA vs. GODFATHER TRAVELS & TOURS (P) LTD. (supra), a three-Judges Bench of the Hon'ble Supreme Court in paragraph Nos.58 and 59 has observed as follows.

'58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words 'as well as the company' appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

59. 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 drag-net 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 which is the three -Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal 16 does not correctly lay down the law and , accordingly, is hereby overruled. The decision in Anil Hada 18 is overruled with the qualifier as stated in para 51. The decision in Modi Distillery 44 has to be treated to be restricted to its own facts as has been explained by us hereinabove.'

9. From the aforesaid decision, it is clear that for maintaining the prosecution under Section 141 of the Negotiable Instruments Act, arraigning of a Company as an accused is imperative. In this case, as already pointed out that the said cheque was issued by the petitioner herein only on behalf of Company viz., M/s.Sowparnika Projects and Infrastructure Private Limited. In such a case, the said Company should have been added as an accused, but the respondent has not added the said company as an accused. Under the said circumstances, the prosecution

against the Director alone is not maintainable. Hence the proceedings against the petitioner in C.C.No.97 of 2013 on the file of the learned Judicial Magistrate No-3, Coimbatore, is liable to be quashed.

10. In the result, the Criminal Original Petition is allowed. The proceedings in C.C.No.97 of 2013 on the file of the learned Judicial Magistrate No-3, Coimbatore (Now C.C.No.202 of 2016, on the file of the learned Judicial Magistrate No-6, Coimbatore) are quashed against the petitioner herein alone. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msrm

To

1.The Judicial Magistrate No-III,
Coimbatore.

2.The Judicial Magistrate No.6,
Coimbatore.

3.1 and 2 Thro' Chief Judicial Magistrate,
Coimbatore.

+2ccs to Mr.A.E.Ravichandran, Advocate, S.R.No.798 & 749.

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and M.P.No.1 of 2013

CA(CO)

rrs 18/02/2019