

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.Nos. 20318, 23435, 23436 of 2016  
& Crl.O.P.No.2586 of 2019 and  
Crl.M.P.Nos. 9500, 10963, 10965 of 2016  
& Crl.M.P.No.1668 of 2019

Crl.O.P.No.20318 of 2016  
and Crl.M.P.No.9500 of 2016

1. Thyagarajan Rajkumar  
2. Arunkumar Bhadra Devi  
3. Raj Kumar Chitra  
4. Ramesh Kumar ... Petitioners/Accused 3 to 6

Vs.

Ugamraj Nahar Huf  
Rep by Kartha  
Ugamraj Nahar,  
Rep by its Power Agent  
Ranjit Kumar Chordia ... Respondent/Complainant

PRAYER:

Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records the records in C.C.No.1706 of 2016 on the file of the learned VIII Metropolitan Magistrate, Geroge Town, Chennai and quash the proceedings therein.

Crl.O.P.No.23435 of 2016  
and Crl.M.P.No.10963 of 2016

1. Thyagarajan Rajkumar  
2. Arunkumar Bhadra Devi  
3. Ramesh Kumar ...Petitioners/Accused 3,4 & 6

Vs.

Ugamraj Nahar Huf  
Rep by Kartha  
Ugamraj Nahar,  
Rep by its Power Agent  
Ranjit Kumar Chordia ... Respondent/Complainant

PRAYER:

Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records the records in C.C.No.1550 of 2016 on the file of the learned VIII Metropolitan Magistrate, Geroge Town, Chennai and quash the proceedings therein.

CrI.O.P.No.23436 of 2016  
and CrI.M.P.No.10965 of 2016

1. Thyagarajan Rajkumar  
2. Arunkumar Bhadra Devi  
3. Ramesh Kumar ... Petitioners/Accused 3,4 & 6

Vs.

Dilmohan Daftari Huf,  
Rep by Kartha  
Dilmohan Daftari ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records the records in C.C.No.1540 of 2016 on the file of the learned VII Metropolitan Magistrate, Geroge Town, Chennai and quash the proceedings therein.

CrI.O.P.No.2586 of 2019  
and CrI.M.P.No.1668 of 2016

1. Thyagarajan Rajkumar  
2. Arunkumar Bhadra Devi  
3. Ramesh Kumar ... Petitioners/Accused 3,4 & 6

Vs.

Dilmohan Daftari Huf,  
Rep by Kartha  
Dilmohan Daftari ... Respondent/Complainant

PRAYER:

Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records the records in respect of the order dated 14.11.2018 passed by the learned VII Metropolitan Magistrate, Geroge Town, Chennai on the memo filed by the respondent on 14.11.2018 in C.C.No.1540 of 2016, direct the learned Magistrate to proceed with the first and second accused int he trial.

For Petitioners in  
all petitions : Mr.C.S.Dhanasekaran

For Respondent in  
all petitions : Mr.C.Parthiban

#### COMMON ORDER

These petitions have been filed to quash the proceedings in C.C.Nos.1706 and 1550 of 2016 on the file of the learned VIII Metropolitan Magistrate, Geroge Town, Chennai and C.C.No.1540 of 2016 learned VII Metropolitan Magistrate, Geroge Town, Chennai.

2. The learned counsel appearing for the petitioners in all the petitions submitted that the petitioners are arraigned as accused 3 to 6 in the complaints filed by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. According to the complainant, the first accused is the Company and the accused 2 to 6 are Managing Director and Directors of the first accused company, who are involved in day to day affairs of the company. Hence all accused are liable to be punished under the Negotiable Instruments Act. Even according to the complainant there is only bald and vague averment, which is not sufficient to sustain the complaint against the petitioners. The Hon'ble Supreme Court of India and this Court repeatedly held that who are in charge of and responsible for the conduct of the business at the time of commission of offence will be liable for criminal action. When the Directors of the company were added as accused for the offence committed by the company, there must be specific averments against the Directors showing as to how and in what manner the Directors are responsible for conduct of business of the company. In this regard, he cited the judgment reported in 2012 CrI. L.J. 625 in the case of Anita Malhotra Vs. Apparel Export Promotion Council & Anr and AIR 2017 SC 2854 in the case of Ashoke Mal Bafna Vs. M/s. Upper India Steel Mfg. & Engg. Co. Ltd., and prayed for quashment of the entire proceedings.

3. Per contra, the learned counsel appearing for the second respondent/defacto complainant submitted that the complaint lodged for the offence punishable under Section 138 of Negotiable Instruments Act. Totally there are six accused and the petitioners are the accused 3 to 6. The first accused is the Private Limited Company and the second accused is the Managing Director of the first accused company and others are Directors of the first accused company. The accused approached the defacto complainant and availed loan and to repay the same they issued cheques. When those cheques were presented for collection, they

were returned dishonoured for the reasons that the payment stopped by the drawer. After issuance of statutory notice, the respondent lodged complaints in the above said C.C.Nos. Though no specific averments made in the complaints, the petitioners are very much acted as Directors of the first accused company during the transaction as such they are also equally liable for the offence committed by the first accused. Therefore, he vehemently opposed to quash the proceedings.

4. Heard Mr.C.S.Dhanasekaran, learned counsel appearing for the petitioners in all cases and Mr.C.Parthiban, learned counsel appearing for the respondent in all cases.

5. The respondent filed three complaints for the offence punishable under Section 138 r/w 141 Negotiable Instruments Act as against the six accused persons, in which the petitioners are arraigned as A3 to A6. The first accused is the company registered under the Companies Act and it is represented by its Managing Director, the second accused. It is seen from the complaint in the long cause title, it is stated that the petitioners are the Directors of the first accused company and other than that nowhere whispered about their role on behalf of the company and simply mentioned that the petitioners are directors and they also involved in the day to day affairs of the company. When the directors are implicated as the accused to attract the offence under Section 141 of Negotiable Instruments Act, there must be specific averments as against each of the directors as to how and in what manner they are responsible for the business of the company. To fasten vicarious liability, specific role must be played by the accused in the company.

6. The judgment relied upon the learned counsel appearing for the petitioners squarely applicable to the case on hand. In the judgment reported in 2012 CrL. L.J. 625 in the case of Anita Malhotra Vs. Apparel Export Promotion Council & Anr., the Hon'ble Supreme Court of India 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."

7. The another judgment reported in AIR 2017 SC 2854 in the case of Ashoke Mal Bafna Vs. M/s. Upper India Steel Mfg. & Engg. Co. Ltd., which reads as follows :-

"10. To fasten vicarious liability under Section 141 of the Act on a person, the law is well-settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the company and in-charge of and responsible for the conduct of the business at the time of commission of an offence will be liable for criminal action [see : Pooja Ravinder Devidasanl V. State of Maharashtra & Ors., AIR 2015 SC 675]

11. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the Company under Section 141 of the Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company"

8. In the case on hand no averments as regard to the how and in what manner the petitioners in-charge of or responsible to the first accused company for conduct of its business. The mere bald and vague allegation that the petitioners are in charge of the day to day affairs of the company is not

sufficient to attract the offence under Section 138 r/w 141 of Negotiable Instruments Act.

9. In the light of the above discussions, the Criminal Original Petitions in Crl.O.P.Nos.20318 & 23435 of 2016 and Crl.O.P.No.23436 of 2016 are allowed and the proceedings in C.C.Nos.1706 & 1550 of 2016, on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai and C.C.No. 1540 of 2016, on the file of the learned VII Metropolitan Magistrate, George Town, Chennai, respectively, are hereby quashed, as far as the petitioners are concerned. Considering the fact that the case is of the year 2016, the trial Court viz., Metropolitan Magistrate Courts-VII & VIII, George Town, Chennai are directed to completed the trial in C.C.Nos.1706 & 1550 of 2016 and C.C.No.1540 of 2016 respectively, as against the other accused persons, within the period of three months from the date of the receipt of a copy of this Order.

10. In view of the order passed in Crl.O.P.No.23436 of 2016, the Criminal Original Petition in Crl.O.P.No.2586 of 2019 is closed. Consequently, connected miscellaneous petitions in all the Criminal Original Petitions are closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rts  
To

1. VII Metropolitan Magistrate Court,  
George Town, Chennai.
2. VIII Metropolitan Magistrate Court,  
George Town, Chennai.
3. Do Thro The Chief Metropolitan Magistrate,  
Egmore, Chennai.

+3ccs to Mr.C.S.Dhanasekaran, Advocate, S.R.No.21280,21279,21278

CRL.O.P.Nos. 20318, 23435, 23436 of 2016  
& Crl.O.P.No.2586 of 2019 and  
Crl.M.P.Nos. 9500, 10963, 10965 of 2016  
& Crl.M.P.No.1668 of 2019

GJ(CO)  
CS/29/04/2019