IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.02.2019
CORAM
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR
Crl.O.P.No.5932 of 2013 and
Crl.M.P.Nos.1 and 2 of 2013

1.Rajeswari,
Director,
M/s.Butterfly Spinning Mills (P) Ltd.,
81/3, R.S.Road, Kommakovil,
Perundurai.

2.P.Senthil,
Director,
M/s.Butterfly Spinning Mills (P) Ltd.,
81/3, R.S.Road, Kommakovil,
Perundurai. ... Petitioners/A3 & A4

Versus

1.Ravindrakumar Agarwal,
Prop.Ravindra Agency,
918, Park road, Erode. ... Respondents/Complainant

2.M/s.Butterfly Spinning Mills (P) Ltd.,
81/3, R.S.Road, Kommakovil,
Perundurai.

3.K.K.Palanisamy,
Managing Director,
M/s.Butterfly Spinning Mills (P) Ltd.,
81/3, R.S.Road, Kommakovil,
Perundurai.

4.P.Sekar,
Managing Director,
M/s.Butterfly Spinning Mills (P) Ltd.,
81/3, R.S.Road, Kommakovil,
Perundurai. ... Respondents/Accused Nos.1, 2 & 5

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to C.C.No.285 of 2005, on the file of the Judicial Magistrate No.III, Erode and quash the same.

For Petitioners : Mr.V.S.Kesavan
For 1st Respondent : Mr.C.Ramkumar

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ORDER

The petitioners, who are the accused Nos.3 and 4 in C.C.No.285 of 2005, before the learned Judicial Magistrate No.III, Erode have filed the above quash petition to quash the proceedings in C.C.No.285 of 2005.

2. The case of the 1st respondent/complainant is that the 1st accused is the company viz., Butterfly Spinning Mills (P) Limited, 2nd accused is the Managing Director and the petitioners/A3 & A4 and A5 are its Directors. On 18.03.2005, the 2nd accused borrowed a sum of Rs.41,000/- (Rupees forty one thousand only) from the 1st respondent/complainant for the purpose of business expenses of the 1st accused company. In discharge of the liability, the 2nd accused issued a cheque drawn on Tamil Nadu Mercantile Bank Ltd. Bearing No.364528, dated 18.04.2005 with the knowledge of A3 to A5 for the said amount. Thereafter, the 1st respondent/complainant presented the said cheque for collection on 18.04.2005 through UTI Bank, Perundurai Road Branch and the same was returned on the same day, for the reason that "Insufficient Funds" and thereafter, the 1st respondent/complainant received the said cheque through the bank. On receipt of the same, the 1st respondent/complainant issued a legal notice through counsel on 13.05.2005 to all the accused. But, the accused did not receive the same, despite having come to know about the issuance of notice and the same was returned on 25.05.2005 and thereafter, the complaint came to be filed against all the accused before the learned Judicial Magistrate No.III, Erode and is taken on file as C.C.No.285 of 2005.

3. The contention of the learned counsel for the petitioners is that, 1st accused is the company viz., Butterfly Spinning Mills (P) Limited, 2nd accused is the Managing Director and the petitioners/A3 & A4 and 5th accused are its Directors. The petitioners have been made as an accused in this case on the strength of 141 of the Negotiable Instruments Act, on the ground that they are the Directors and hence, they are liable for the debt of the company.

4. He further submits that the complaint is a time barred one. The petitioners having resigned from the company, even before the amount was borrowed by the 1st accused company. Further, there is no specific averments against them except for the bald allegations that the petitioners are the Directors of the 1st accused company and they have knowledge about the issuance of cheque.

Further, they never took part in day-to-day affairs and were incharge of the 1st accused company.

5. In support of their claim, the petitioners have filed a typed set of papers and on perusal of the Form No.32, it is found that, the petitioners were resigned from the 1st accused company on 15.10.2004. Admittedly, the amount has been borrowed by the 1st accused company on 18.03.2005 nearly a year, after the resignation of the petitioners/A3 and A4. He further submitted that, the legal notice has been issued by the 1st respondent/complainant on 13.05.2005, which came to be returned to him on 25.05.2005 and thereafter by 01.08.2005, the complaint ought to have been filed. From the certified copy of the lower Court, it is seen that, the complaint has been filed only on 01.08.2005 nearly a month after the prescribed period. Hence, they prayed to quash the proceedings against the petitioners on these grounds.

6. The learned counsel for the 1st respondent/complainant submits that these accused are non other than the wife and son of the 2nd accused, who is the Managing Director of the 1st accused company and they are living together and the transactions were done with the knowledge of these accused persons. Further, the petitioners have not sent any reply to the statutory notice and that they were resigned from the company. In this case, the accused have not appeared before the trial Court, hence, the case is pending from the year 2005 onwards without any progress.

7. Considering the rival submissions, and on perusal of the complaint, it is seen that there is no specific averments as against the petitioners/A3 & A4. Further, it is seen that the petitioners have already resigned from the 1st accused company on 15.10.2004, as could be seen from Form.32. Admittedly, the amount has been borrowed by the 1st accused company on 18.03.2005. The learned counsel for the petitioners relied upon the Citation of Hon'ble Apex Court in the case of Saroj Kumar Poddar Versus State (NCT of Delhi) and another reported in 2007 (1) CTC 529.

8. Considering the facts and circumstances of this case, this Court finds that there is no specific averments against the petitioners herein and the petitioners having resigned from the company, even before the amount was borrowed by the 1st accused company and following the Judgment of the Hon'ble Apex Court in SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla reported in 2005(8) SCC, this Court has held that merely being a Director of

the company is not sufficient to make a person liable under Section 141 of the Negotiable Instruments Act and further necessary and specific averments is that, at the time of offence committed by the accused person to be shown as the persons incharge and responsible for the conduct of business of the company and such averments are essential for under Section 141 of the Negotiable Instruments Act. In this case there is no specific averments against the petitioners.

9. In view of the above, this Criminal Original Petition is allowed and the proceedings in C.C.No.285 of 2005, on the file of the Judicial Magistrate Court No.III, Erode as against the petitioners/A3 & A4 alone quashed. The Court below is directed to complete the proceedings as against the accused Nos.1, 2 & 5 within a period of three months from the date of receipt of a copy of this order and consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate No.III, Erode.

2.do thro' The Chief Judicial Magistrate,Erode.

+1cc to Mr.V.S.Kesavan, Advocate SR.No. 12132
+1cc to Mr.C.Ramkumar , Advocate SR.No. 12497

Crl.O.P.No.5932 of 2013

A.SK(19/02/2019)