IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.Nos. 520, 25307, 25314 and 25318 of 2018
and Crl.MP.Nos.161, 162, 14380, 14381,
14385, 14388, 14391 and 14394 of 2018

Maheshchandra Mulkraj Julka @ M.C.Julka
S/o.Late Shree Mulkh Raj Julka
B-104, Sagar Tower,
Mansi Circle, Satellite,
Ahmedabad - 380 015. ... Petitioner in all petitions

Vs.

M/s.Redigton (India) Ltd.,
Rep by M.Sundararajan,
Senior Executive,
SPL Guindy House,
95, Mount Road,
Guindy - 600 032 ... Respondent in all petitions

Common Prayer in Crl.O.P.Nos.520 and 25318 of 2018: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records and quash the complaint against the petitioner/10th accused in C.C.Nos.3645 and 3647 of 2016, respectively, on the file of the learned IX Metropolitan Magistrate, FTC, Saidapet, Chennai.

Common Prayer in Crl.O.P.Nos.25307 and 25314 of 2018: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records and quash the complaint against the petitioner/10th accused in C.C.Nos.3648 and 3644 of 2016, respectively on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner in all petitions : Mr.C.Nithysh Sekhar

For Respondent
in all petitions : Mr.V.T.Narendran

COMMON ORDER

These petitions have been filed to quash the proceedings initiated by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act in C.C.Nos.3645 and 3647 of 2016, on the file of the learned Metropolitan Magistrate, FTC- III, Saidapet, Chennai and C.C.Nos.3648 and 3644 of 2016 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai as against the petitioner.

2. According to the complainant, it is a Private Limited company and it has been carrying business of distribution of computers and computer peripherals other related products of various multinational companies. The first accused is the distributor of the complainant company represented by the second and third accused along with others. The accused are being the Directors purchased Trend Micro License Software on various invoices to the first accused company. On receipt of the goods the accused company issued four cheques for a sum of Rs.3,89,24,578/-, Rs.2,14,08,462/-, Rs.4,58,84,065/- and Rs.4,06,52,202/- respectively, towards the payment. When the said cheques were presented for collection on 11.07.2013, 04.09.2013, 15.07.2013 and 08.07.2013 respectively, the same were returned dishonored for the reason that the "Funds insufficient". Therefore, the complainant caused legal notice and initiated proceedings under Section 138 r/w 141 of Negotiable Instruments Act, against the accused company and other Directors.

2.1. The learned counsel appearing for the petitioner in all petitions submitted that there are totally ten accused in all the proceedings, in which the petitioner is arraigned as A10. He further submitted that the petitioner is not a signatory of the cheque and he is not a Director of the first accused company. The alleged cheques were presented for collection on 11.07.2013, 04.09.2013, 15.07.2013 and 08.07.2013 respectively. Whereas the petitioner sent a letter dated 12.08.2013 stating that he was resigned from the first accused company from 01.03.2013 itself. He further submitted that the petitioner was working as General Manager in a Nationalized company and after his retirement, he was joined with the first accused company and promoted as Vice President (Internal Audit) of the first accused company on 01.10.2011, till his resignation on 01.03.2013. He further submitted that the petitioner never acted as in charge of the day to day affairs of the company and never involved any purchase or selling transaction of the first accused company as alleged by the respondent herein. Therefore, he prayed for quashment of all the proceedings.

3. The learned counsel appearing for the respondent in all the petitions submitted that the petitioner and other accused are whole time directors of the first accused company and they are jointly and individually in-charge and responsible for the day to day management and affairs of the first accused company. He further submitted that the petitioner along with other accused colluded and conspired together and issued the cheques, after receiving the goods from the complainant company, knowing that they did not have sufficient funds in the account and cheated the respondent/complainant company. Therefore he prayed for dismissal of the quash petitions.

4. Heard Mr.C.Nithysh Sekhar, learned counsel appearing for the petitioner in all petitions, Mr.V.T.Narendran, learned counsel appearing for the respondent in all petitions.

5. On perusal of the records, shows that the petitioner submitted Form-32 before the Registrar of Company and resigned from the Directorship from 01.03.2013. He also produced the certified copy of the Form 32 obtained from the Registrar of Company. All the cheques were issued on behalf of the first accused company only after the resignation of the petitioner from the Directorship. Therefore at the time of alleged transaction, the petitioner was not the Director of the first accused company.

6. It is also seen that the first accused company is represented by its General Manager, who arraigned as A3 in the complaint, who is in-charge of the day to day affairs of the company and he is absconding from the India. It is also seen that the Police Station in Gujarat issued red card as against the third accused. The petitioner is only a salaried employee in the first accused company and he had taken steps to recover his salary arrears for a sum of Rs.10,60,000/- from the first accused company. In fact, he lodged a complaint as against the third accused, who represented on behalf of the first accused company, before the Vastrapur Police Station, Ahamathabad. On receipt of the said complaint a case has been registered in Crime No.308/13, for the offence under Sections 409, 418, 201 & 120B of IPC, as against the first and third accused in the present complaint. Therefore, at the time of issuance of cheques, the petitioner was not at all the Director of the first accused company and he resigned from the company as early as on 01.03.2013. Therefore, he is not liable to be punished under Section 138 of Negotiable Instruments Act. The complaint cannot be sustained as against the petitioner and it is clear abuse of process of law.

7. In this regard, it is relevant to cite the judgment reported in (2019) 1 SCC (Cri) 568 in the case of Ashoke Mal Bafna Vs. Upper India Steel Manufacturing and Engineering Company Ltd., in which, the Hon'ble Supreme Court of India held as follows:-

> "5. We have given our thoughtful consideration to the arguments advanced by the counsel on either side. The issue for determination before us is whether the role of the Appellant in the capacity of erstwhile Director of the defaulter Company makes him vicariously liable for the activities of the defaulter Company as defined Under Section 141 of the Act? In that perception, whether the Appellant had committed the offence chargeable Under Section 138 of the Act; and whether the High Court was right in dismissing the Criminal Miscellaneous application filed by the Appellant seeking quashing of the criminal proceedings?
>
> 6. Before delving into the issue further, it would be apt to look into the principles of law settled by this Court on the subject.
>
> 7. In Girdhari Lal Gupta v. D.H. Mehta and Anr. (1971) 3 SCC 189 : (AIR 1971 SC 28), this Court observed that a person 'in charge of a business' means that the person should be in overall control of the day to day business of the Company.
>
> 8. Interpreting the provisions of Section 141 this Court in National Small Industries Corporation v. Harmeet Singh Palatal and Anr. (2010) 3 SCC 330 : (AIR 2010 SC (Supp) 569) observed that Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in-charge of and responsible to the Company for the conduct of business of the Company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner the accused was in charge of or was responsible to the Company for the conduct

of its business. This is in consonance with strict interpretation of penal statutes especially where such statutes create vicarious liability.

9. 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 Devidasani v. State of Maharashtra and Ors. : AIR 2015 SC 675.]

10. 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, the petitioner has already been resigned from the first accused company and submitted Form-32 as early as on 01.03.2013. Admittedly, as against the petitioner there is no specific allegation as to how the petitioner participated in the day to day affairs of the company and he was incharge and responsible to the company for the conduct of business. When there is a bald and vague allegations, it is not sufficient to make out a case against the petitioner. As held by Hon'ble Supreme Court of India, there must be specific avernments as against the Directors on how and what manner they responsible for the conduct of the business of the company. Therefore, the complaints cannot be sustained as against the petitioner and it is liable to be quashed.

9. In view of the above discussions, all the Criminal Original Petitions stand allowed and the proceedings in C.C.Nos.3645 and 3647 of 2016, on the file of the learned Metropolitan Magistrate, FTC-III, Saidapet, Chennai and C.C.Nos.

3648 and 3644 of 2016 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai are hereby quashed, insofar as the petitioner is concerned. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rts

To

1. The IX Metropolitan Magistrate Court,
   Fast Track Court, Saidapet, Chennai.

2. The XVIII Metropolitan Magistrate Court,
   Saidapet, Chennai.

+8 cc's to Mr.C.Nithysh Sekar, Advocate, Sr.No. 36937
+1 cc to M/s.V.T.Narendran, Advocate, Sr.No. 37244

CRL.O.P.Nos. 520, 25307, 25314
and 25318 of 2018
and Crl.MP.Nos.161, 162,
14380, 14381, 14385, 14388,
14391 and 14394 of 2018

CSL/27.05.2019