

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.2615 of 2019 and
Crl.M.P.No.1688 of 2019

1.M/s.Pinnacle Impex,
Rep. by its Partner Gokul,
No.38, Kotthukkaran Pudur, R.N.Pudur Post,
Erode - 638 005.
2.Gokul
3.Aravind Kumar ... Petitioners

Vs.

S.Senthil Rajan ... Respondent

PRAYER:

Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the S.T.C.No.268 of 2018 on the file of the Learned Judicial Magistrate (Fast Track Court), Tiruppur and quash the same by allowing this Criminal Original Petition.

For Petitioners : Mr.M.Guruprasad

For Respondent : Mr.K.Sudhakar

ORDER

This petition has been filed to quash the proceedings in STC.No.268 of 2018 on the file of the learned Judicial Magistrate(Fast Track Court), Tiruppur.

2. Mr.M.Guruprasad, the learned counsel for the petitioners submitted that the petitioners are arrayed as accused A1 to A3 in the proceedings initiated by the respondent for the offences punishable under Sections 138 and 142 of Negotiable Instruments Act. The petitioners placed order to the respondent and purchased by the purchased order dated 16.12.2017. After delivery of goods, the petitioners issued cheque to discharge their liability signed by the second petitioner for a sum of Rs.10 lakhs. The said cheque was presented for collection and

the same was returned dishonoured with the endorsement 'payment stopped by drawer'. After issuance of statutory notice, the complaint has been initiated under Sections 138 and 142 of Negotiable Instruments Act. The learned counsel for the petitioners further submitted that the learned Magistrate while taking cognizance, the trial court did not follow the procedure contemplated under Section 202 Cr.P.C. Further he submitted that even as per the complaint there is absolutely no material to connect the third petitioner to the complaint and as such the learned Magistrate ought not to have taken cognizance as against the third petitioner.

3. The learned counsel for the petitioners further submitted that the third petitioner is not at all liable for any offence as averred by the complainant. The third petitioner is merely a partner of the company and it is not sufficient to make the person liable under Section 141 of Negotiable Instruments Act. Even as per the complaint, there is no specific allegation and did not even whisper about his role in the alleged transaction and he is also not responsible for day to day affairs of the first petitioner firm. The entire allegations made in the petition are vague and bald. Therefore, the third petitioner is not at all liable to be prosecuted. In this regard, he relied upon the judgments of the Hon'ble Supreme Court of India rendered in the case of Aparna A.Shah Vs. Sheth Developers Private Limited and Another reported in (2013) 8 SCC 71 and in the case of Abhijit Pawar Vs.Hemant Madhukar Nimbalkar and Another reported in (2017) 3 SCC 528 and also in the case of Anil Pathak, Director of Hallmark Living Space Pvt Ltd., Vs. Larsen and Toubro Ltd, rep by its Authorized Rep.V.K.Natarajan reported in 2019 (1) MWN (Cr.) DCC 1 (Mad).

4. Per contra, Mr.K.Sudhakar, the learned counsel for the respondent submitted that the petitioners are arrayed as A1 to A3. The respondent filed the complaint for the offences punishable under Sections 138 and 142 of Negotiable Instruments Act alleging that the respondent is doing business of Printing, Hand tags, Stickers, Labels Boxes and Inner Boards manufacturing and also make job work in the name and style of M/s.Sugadev Printer as proprietorship concer. While being so, the petitioners approached the respondent and placed order and on the basis of the order, the respondent delivered goods. As per terms and conditions to discharge a part of liability, the petitioners issued cheque for a sum of Rs.10 lakhs. It was presented for collection and the same was returned dishonoured for the reason 'payment stopped by drawer'. Therefore, the respondent issued statutory notice and initiated proceedings under the Negotiable Instruments Act. On presentation of the complaint, the learned Magistrate conducted detailed enquiry under Section 202 Cr.P.C. and recorded sworn statement of the

complainant and had taken cognizance for the offences under Sections 138 and 142 of Negotiable Instruments Act. Thereafter summons were issued, but the petitioners did not appear before the trial court even for initial questioning. Therefore, the learned Magistrate issued NBW and it is pending. At this stage, the petitioners have approached this Court to quash the entire proceedings.

5. The learned counsel for the respondent further submitted that insofar as the third petitioner is concerned, he is none other than the partner of the first accused firm and brother of the second accused. Therefore, he has actively participated in the day to day affairs of the company and he is the main person to run the company. In fact, only on the consultation of the third petitioner, they issued cheque to the respondents. Further submitted that when NBW is pending, the petitioners are not at all entitled for any relief. Therefore, he prayed for dismissal of this quash petition.

6. Heard, Mr.M.Guruprasad, the learned counsel for the petitioners and Mr.K.Sudhakar, the learned counsel for the respondent.

7. The petitioners are arrayed as A1 to A3 in the proceedings initiated by the respondent under Negotiable Instruments Act. Admittedly, the petitioners purchased goods and to discharge part of their liability, they issued cheque and the same was returned dishonoured for the reason 'payment stopped by drawer'. Thereafter, the respondent issued statutory notice and after receipt of the same, the petitioner did not settle the amount. Therefore the respondent lodged a complaint only on receipt of the same. The learned Magistrate conducted enquiry as contemplated under Section 202 Cr.P.C. with the complainant and recorded statement. After being satisfied, the learned Magistrate had taken cognizance for the offences punishable under Sections 138 and 142 of Negotiable Instruments Act and issued summons to the petitioners. In fact, after receipt of the same, the petitioners did not even appear before the trial court and as such the trial court issued NBW as against the petitioners. Insofar as the third petitioner is concerned, he is also one of the partners of the first accused firm and he is none other than own brother of Managing Partner namely, the second accused herein.

8. There are catena of decisions to show that when can partner of the firm be made liable for the offence committed by the partnership firm. It is answered that for making a Director / partner of the company or partnership firm liable for offences

under Section 141 there must be specific averment against the Director / partner showing as to how and in what manner the Director / partner is responsible for conduct of the business of the company or partnership firm. Further to fasten vicarious liability under Section 141 of Negotiable Instruments Act on a person, law is well settled by the Hon'ble Supreme Court, that complainant should specifically show as to how and in what manner the accused is responsible. Simply because a person is a Director of defaulter company does not make him liable under the Negotiable Instruments Act. Only the person who was at the helm of affairs of the company and in charge of and responsible for the conduct of business at the time of commission of an offence, will be liable for criminal action.

9. It is seen from the complaint that the second and third petitioners are partners of the first accused firm and they are in charge of day to day affairs of the garment business run by the first petitioner. Further alleged that on behalf of the first petitioner, with the consent of the third petitioner, the second petitioner issued cheque. Admittedly, the second petitioner is the authorised signatory of the first petitioner firm. It is also pertinent to note that the first petitioner is the firm containing only two partners namely second and third petitioners herein. It is also seen that the respondent issued statutory notice on 01.06.2018 to the petitioners and the same was duly received by them on 08.06.2018. Thereafter, the petitioners neither cared to repay the cheque amount nor replied for the statutory notice. Therefore, it shows that the second and third petitioners are neglected to issue any reply notice. They are the persons who run the firm. Therefore, it cannot be said that the third petitioner is not actively participating in the day to day affairs of the partnership firm. Therefore, the judgments relied upon by the petitioners are not at all helpful to the case of the petitioners.

10. Further it is also seen that after receipt of the summons from the trial Court, the petitioners never bothered and did not appear before the trial court even for preliminary questioning under Section 313 Cr.P.C. Therefore, the trial court issued NBW and it is still pending. It shows the attitude of the petitioners that they never cared about the court proceedings and as such they are not at all entitled for any relief. However, considering the case is of the year 2018, the learned Judicial Magistrate (Fast Track Court), Tiruppur is directed to complete the trial process in S.T.C.No.268 of 2018 within a period of three months from the date of receipt of a copy of this Order.

11. In view of the above, this petition is devoid of merits as such this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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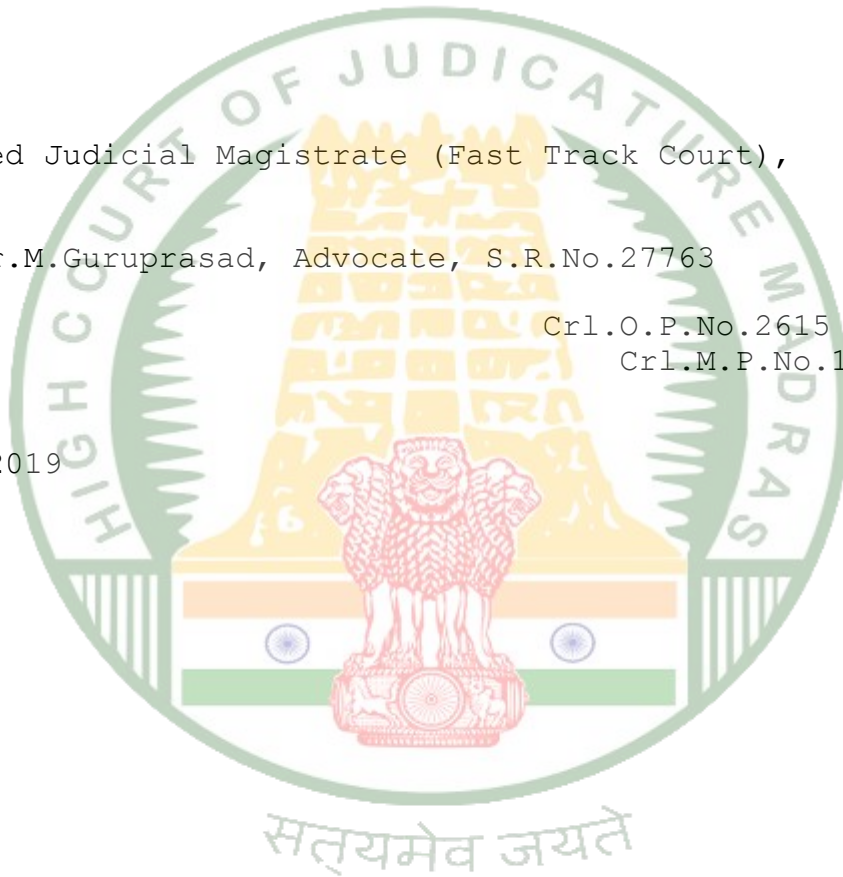
To

The learned Judicial Magistrate (Fast Track Court),
Tiruppur

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.27763

Cr1.O.P.No.2615 of 2019 and
Cr1.M.P.No.1688 of 2019

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