IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.3314 of 2019 and
M.P.Nos.2157 & 2158 of 2019

Nandakishore Sonthalia
Former Director,
M/s. Statco Infra Projects P Ltd.,
No. 4/4, Ground Floor, Justice Ramanujam Street,
Malavya Avenue,
Chennai - 600 041. ... Petitioner

Vs.

M/s. Narendra Properties Ltd.,
represented by its Director-Operations,
Mr. Chirag Maher having office at
2A, III Floor, wellingdon Estate,
53 Ethiraj Salai, Chennai -600 105. ...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in respect of the impugned complaint in C.C.No.4929 of 2017, now pending on the file of the learned Fast Track Metropolitan Magistrate Court No.II, Egmore at Allikulam and quash the same.

For Petitioner : Mr.A.Thirumaran

For Respondent : No Appearance

ORDER

This petition has been filed to quash the proceedings in C.C.No.4929 of 2017 on the file of the learned Fast Track Metropolitan Magistrate Court No.II, Egmore at Allikulam arising out of the offence under Section 138 of the Negotiable Instruments Act.

2. The brief facts of the case is that the petitioner herein has been arrayed as 4th accused in the complaint. The respondent filed a complaint for the offences under Section 138 of the Negotiable Instruments Act alleging that the accused 2 to 6 were partners of the company. The company is arrayed as first accused. The fourth accused on behalf of the first accused,

executed a promissory note on 01.08.2011, promising to return a sum of Rs. 1,00,000/- (Rupees One Crore Only) along with 18% interest per annum. The First acused had made part payments of Rs.50,00,000/- (Rupees Fifty Lakhs Only) towards the principal amount and for the balance amount, the first accused had executed a fresh promissory note dated 01.0.40213 and signed by the fourth accused. Subsequently, the third accused a cheque no. 013588 dated 18.01.2016 for the balance amount, the same was returned with an endorsement "Payment stopped by the drawer". Hence, the complaint.

3. The learned counsel for the petitioners further submits that insofar as the petitioner herein is concerned, he has no role in the day to day affairs of the first accused company and he had resigned from the Directorship of the first accused company viz., M/s. Statco Infra Projects Pvt Ltd., as early as on 03.09.2013 but alleged cheque was dishonoured on 02.03.2016. He has further submitted that appropriate from 32 was also filed before the Registrar of Companies and since the statutory legal notice was not sent to proper address, the petitioner has not received the same and therefore he did not cause any reply. Admittedly, the third accused was the managing Director of the first accused company and issued cheque for the said sum. Further he submitted that even according to the complainant there is absolutely no specific allegations as against the petitioner and he has no role to play in the first accused company. Therefore, he prays to quash the said complaint.

4. Heard, Mr.A.K.Kumaraswamy, the learned counsel for the petitioner. None appears on behalf of the respondent.

5. On perusal of records, it is seen that the petitioner is arrayed as 4th accused in the complaint preferred by the respondent in C.C. No. 4929 of 2017. It is also seen from the complaint that the first accused is the company and others are Directors/Managing Directors of the said company. The company is running in the name and style of M/s. Statco Infraprojects Pvt Ltd. The third accused has issued a cheque no. 013588 dated 18.01.2016 towards the the balance amount of Rs.50,00,000/- and the same was returned with an endorsement "Payment stopped by the drawer".

6. As pointed out by the learned counsel for the petitioner, there is no specific allegations or averments as against the petitioner in the complaint. It is also silent about the role played by the petitioner on behalf of the first accused company. The complainant also failed to state whether the petitioner is involved in the day to day affairs of the first accused company or not, since the petitioner had resigned from the Directorship of the first accused company as early as on 03.09.2013 .

7. In this regard, the learned counsel for the petitioner relied upon the judgment in the case of S.M.S.Pharmaceuticals Ltd Vs. Neeta Bhalla and another reported in 2005 (5) CTC 65, in which the Hon'ble Supreme Court of India has held as follows:

> "13.A reference to sub-section (2) of Section 141 fortifies the above reasoning because sub-section (2) envisages direct involvement of any Director, Manager, Secretary or other officer of a company in commission of an offence. This section operates when in a trial it is proved that the offence has been committed with the consent or connivance or is attributable to neglect on the part of any of the holders of these offices in a company. In such a case, such persons are to be held liable. Provision has been made for Directors, Managers, Secretaries and other officers of a company to cover them in cases of their proved involvement.
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> 14. The conclusion is inevitable that the liability arises on account of conduct , act or omission on the part of a person and not merely on account of holding an office or a position in a company. Therefore, in order to bring a case within Section 141 of the Act the complaint must disclose the necessary facts which make a person liable.
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> 15. The question of what should be averments in a criminal complaint has come up for consideration before various High Courts in the country as also before this Court. Secunderabad Health Care Ltd. and others v. Secunderabad Hospitals Pvt. Ltd. and others [1999 (96) C.C.(AP) 106] was a case under the Negotiable Instruments Act specifically dealing with Sections 138 and 141 thereof. The Andhra Pradesh High Court held that every Director of a company is not automatically vicariously liable for the offence committed by the company. Only such Directors or Director who were in charge of or responsible to the company for the conduct of business of the company at the material time when the offence was committed alone shall be deemed to be guilty of the offence. Further it was observed that the requirement of law is that
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> "there must be clear, unambiguous and specific allegations against the persons who are impleaded as

accused that they were in charge of and responsible to the company in the conduct of its business in the material time when the offence was committed."

The same High Court in v. Sudheer Reddy v. State of Andhra Pradesh and others [2000 (99) CC (AP)107] held that "the purpose of Section 141 of the Negotiable Instruments Act would appear to be that a person who appears to be merely a director of the Company cannot be fastened with criminal liability for an offence under Section 138 of the Negotiable Instruments Act unless it is shown that he was involved in the day-today affairs of the company and was responsible to the company." Further, it was held that allegations in this behalf have to be made in a complaint before process can be issued against a person in a complaint. To same effect is the judgment of the Madras High Court in R. Kannan v. Kotak Mahindra Finance Ltd. 2003 (115) CC (Mad) 321. In Lok Housing and Constructions Ltd. v. Raghupati Leasing and Finance Ltd. and another [2003 (115) CC (Del) 957], the Delhi High Court noticed that there were clear averments about the fact that accused No.2 to 12 were officers in charge of and responsible to the company in the conduct of day-to-day business at the time of commission of offence. Therefore, the Court refused to quash the complaint. In Sunil Kumar Chhaparia v. Dakka Eshwaraiah and another [2002 (108) CC (AP) 687, the Andhra Pradesh High Court noted that there was a consensus of judicial opinion that

" a director of a company cannot be prosecuted for an offence under Section 138 of the Act in the absence of a specific allegation in the complaint that he was in charge of and responsible to the company in the conduct of its business at the relevant time or that the offence was committed with his consent or connivance."

"20. In view of the above discussion, our answers to the questions posed in the Reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."

8. The above judgment is squarely applicable to the case on hand. In the present complaint also there is no averment made as against the petitioner as required under Section 141 of the Negotiable Instruments Act. Further admittedly the third accused had only issued the cheque on behalf of the company, by virtue of the third accused hold as Managing Director of the first accused company. He is in charge and responsible for the conduct of the business of the company. Therefore, the complaint cannot be sustainable as against the petitioner herein, since there are no averments as against him except stating in the cause title that they are partners of the company. Further there is no avernment that the petitioner was in charge of the business and was responsible for the conduct of the business of the company nor was there any allegation that the petitioner had connived with the third accused in the matter of issuance of cheque.

9. In view of the above discussions, this Criminal Original Petition is allowed as such and the proceedings in C.C.No.4929

of 2017 on the file of the learned Fast Track Metropolitan Magistrate Court NO.II, Egmore at Allikulam, Chennai is quashed as against the petitioner alone. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AD IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Fast Track Metropolitan Magistrate No.II,
Egmore at Allikulam,
Chennai.

2.-Do- Thro The Chief Metropolitan Magistrate,
Chennai.

+1cc to Mr.A.Thirumaran, Advocate Sr.26621

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kk[co]
srg 29/05/2019