

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.2165 of 2014
and
M.P.Nos.1 & 2 of 2014

Tamilnad Mega Food Park Ltd.,
Its Director Rep. by Mr.Jayant Kumar Jain
15B, Hemanta Basu Sarani
Kolkata-700 001

... Petitioner/Accused 3

Vs.

M/s.MCS Agro Commodities
Proprietor
M.C.Sakthivel
S2, Kavya Apartments
Saral Village, Nagaramalai Road
Salem 636 030

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.234 of 2013 pending on the file of the learned Judicial Magistrate No.5, Salem and quash the Said complaint with regard to the petitioner herein.

For Petitioner : Mr.T.Poornam

For Respondent : Mr.R.Thamarai Selvan
No Appearance

ORDER

The Criminal Original Petition has been filed by the petitioner under Section 482 of Cr.P.C. praying to call for the records in C.C.No.234 of 2013 pending on the file of the learned Judicial Magistrate No.5, Salem and quash the Said complaint with regard to the petitioner herein.

2.The learned counsel appearing for the petitioner would submit that the petitioner is arraigned as accused No.3 in the complaint 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 2nd & 3rd accused are the Managing Director and Director 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 petitioner. 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 CrL. 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. The learned counsel appearing for the respondent contend that the respondent/complainant lodged complaint for the offence punishable under Section 138 of Negotiable Instruments Act. Totally there are three accused and the petitioner herein is the 3rd accused. The first accused is the Private Limited Company and the second accused is the Managing Director of the first accused company and the 3rd Accused herein is the Director 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 a complaint in the above said C.C.No. Though no specific averments made in the complaint, the petitioner has 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.

4. Heard the learned counsel appearing for the petitioner.

5. The respondent filed a complaint for the offence punishable under Section 138 and 142 of Negotiable Instruments Act r/w Section 200 Cr.P.C. as against the three accused persons, in which the petitioner is arraigned as A3. 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 petitioner is the Director of the first accused company and other than that no where whispered about the role of the Director on behalf of the company and simply mentioned that the petitioner is the director and he is 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 142 of Negotiable Instruments Act, there must be specific avernments 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 petitioner squarely applicable to the case on hand. In the judgment reported in 2012 CrI. 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 avernments 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 avernments as regard to the how and in what manner the petitioner is in-charge of or responsible for the first accused company to conduct its business. The mere bald and vague allegation that the petitioner is in charge of the day to day affairs of the company is not sufficient to attract the offence under Section 138 r/w 142 of Negotiable Instruments Act.

9.In the light of the above discussions, the Criminal Original Petitions in CrI.O.P.No.2165 of 2014 is allowed and the proceedings in C.C.No.234 of 2013, on the file of the learned Judicial Magistrate No.5, Salem is hereby quashed, as far as the petitioner is concerned. Considering the fact that the case is of the year 2013, the trial Court viz., the learned Judicial Magistrate No.5, Salem is hereby directed to complete the trial

in C.C.No.234 of 2013, 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.Accordingly, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

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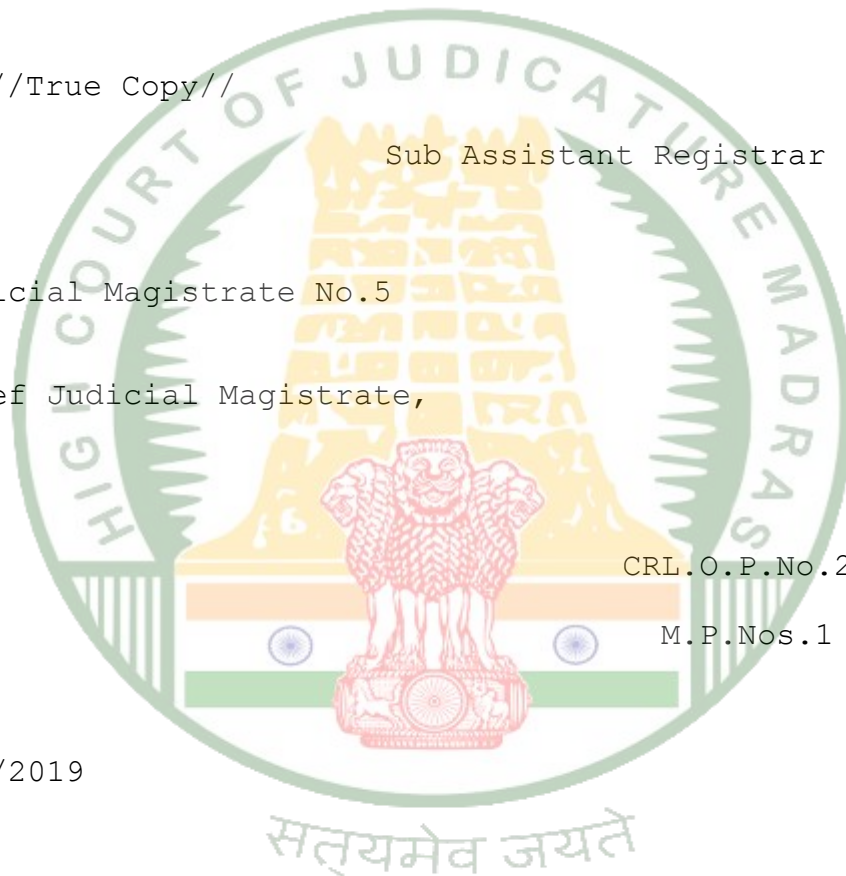
Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.5
Salem.
- 2.The Chief Judicial Magistrate,
Salem.

CRL.O.P.No.2165 of 2014
and
M.P.Nos.1 & 2 of 2014

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