

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.24283 of 2014

1. Mr.Dinesh

2. K.Rajesh

...Petitioners/A2 & 4

Vs.

Praveen

...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to quash the order of taking cognizance of the complaint for the offence under Section 138 of Negotiable Instruments Act by the learned Judicial Magistrate, Udhagamandalam in S.T.C. No.434 of 2014 filed by the respondent/complainant herein against the petitioners/accused herein.

For Petitioners : Mr. S.Ilamparithi

For Respondent : Mr. R.Vivekananthan

ORDER

This Criminal Original Petition has been filed challenging the proceedings initiated by the respondent against the petitioners for an offence under Section 138 of Negotiable Instruments Act.

2. The petitioners have been added as A2 and A4 in the complaint filed by the respondent.

3. The learned counsel for the petitioners submitted that A1 is a partnership firm and A2 to A4 are its partners. The learned counsel submitted that a reading of the entire complaint shows that it is only A3 who had signed the cheque and issued it to the respondent and there is no averment in the complaint to the effect that the petitioners are incharge of and responsible for the day-to-day affairs of the firm. The learned counsel therefore submitted that the Court below went wrong in taking cognizance of the complaint in-so-far-as the petitioners are concerned.

4. The learned counsel for the respondent submitted that admittedly, even as per the complaint, A2 namely the 1st petitioner is the Managing Partner of the A1 firm. Therefore, the very capacity held by the 1st petitioner makes him responsible for running the day-to-day affairs of the firm. In-so-far-as the 2nd petitioner is concerned, he is only a partner in A1 firm. The learned counsel in order to substantiate his submissions relied upon the judgment of the Hon'ble Supreme Court in GUNMALA SALES PRIVATE LIMITED AND OTHERS v. ANU MEHTA AND OTHERS reported in (2015) 1 Supreme Court Cases 103.

5. This Court has carefully considered the submissions made on either side and the materials placed on record.

6. It is seen from the averments made in the complaint that the 1st petitioner has been shown as the Managing Partner. Therefore, by the very nature of the status held by the 1st petitioner, he is deemed to be incharge of and responsible for conducting the affairs of A1 firm. He is vicariously liable under Section 141 of the Negotiable Instruments Act.

7. In-so-far-as the 2nd petitioner (A4) is concerned, he shown to be a partner in the A1 firm. But, however, there is not even an averment in the complaint to the effect that he is incharge of and responsible for the conduct of the day-to-day affairs of the firm and in what way he has participated in the conduct of the business. Without such an averment, the requirements of Section 141 of Negotiable Instruments Act has not been satisfied. Therefore, the proceedings in-so-far-as the 2nd petitioner (A4) is concerned is a clear abuse of process of Court and it requires interference by this Court. In view of the above, this Criminal Original Petition is dismissed in-so-far-as the 1st petitioner is concerned and the proceedings in S.T.C.No.434 of 2014 on the file of the Judicial Magistrate, Udhagamandalam as against the 2nd petitioner is hereby quashed. The Court below is directed to complete the proceedings in S.T.C.No.434 of 2014 as against the other accused persons (A1, A2 and A3) within a period of three months from the date of receipt of copy of this order.

8. In the result, this Criminal Original Petition is partly allowed.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

The Judicial Magistrate,
Udhagamandalam,
Nilgiris District.

+1cc to Mr.R.Vivekananthan, Advocate SR.No.48774

CRL.OP.No.24283 of 2014

SAI (CO)
GMY (24/06/2019)



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