IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 07.03.2019
CORAM
THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.18476 of 2014
and
M.P.No.1 of 2014

V.Senthil Kumar .. Petitioner

Vs.

M/s. Sri Vaisnavi Traders,
Rep. By its Partner G.Thiyagarajan,
S/o C.Gopal,
114/147, Radio Park East Street,
Sanjeevirayanpet,
Salem - 6. .. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in respect of the complaint filed by the respondent herein in C.C.No.71 of 2014 Judicial Magistrate No.III, Salem and quash the same.

For Petitioner : Mr.R.Nalliiyappan
For Respondent : No appearance

O R D E R

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.71 of 2014 on the file of the learned Judicial Magistrate No.III, Salem.

2.The petitioner/accused was one of the partner of M/s.Venkatadri Tex and there are totally four partners to the said company. The petitioner and other partners used to purchase cotton yarn from the respondent company viz., Sri Vaisnavi Traders, on various dates on credit basis and pay the amount due within 30 days, in default to pay 24% towards the dues. While so, there is a due of Rs.3,30,977/- from the petitioner's company after deducting all the payments. All the four partners are jointly liable to pay the due amount. Inspite of repeated demands from the complainant company, one of the partner, arrayed as A2 in this case has issued two cheques in favour of the complainant. When the cheques were presented for collection, it was returned as “Insufficient Funds”. Thereafter, the respondent issued a legal notice to the partners of the company for the petitioner/A4 issued a reply notice stating that he is no more a partner and has been relieved from the 1st respondent's partnership firm since, January 2013 onwards.

Hence, the respondent company/complainant filed a complaint as against the accused persons/partners of the company, before the learned Judicial Magistrate No.III, Salem, under Section 138 N.I.Act, and the same was taken cognizance by the learned Judicial Magistrate No.III, Salem in C.C.No.71 of 2014. Aggrieved against the same, the petitioner/4th accused has filed the present petition to quash the complaint filed by the respondent in C.C.No.71 of 2014 before the learned Judicial Magistrate No.III, Salem.

3.The learned counsel appearing for the petitioner submitted that the petitioner was arrayed as 4th accused in the case. He submitted that the petitioner is no way connected with this complaint. Since, he has been relieved from the partnership firm from January 2013 itself. Hence, he prays to quash the private complaint lodged against the petitioner.

4.Per contra, the learned counsel for the respondent/complainant company submitted that the complaint was lodged under section 138 of Negotiable Instrument Act as against the company and four others. A1 is the company and four others are partner of the company. The present petitioner is A4. 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 complaints in C.C.No.71 of 2014. Though no specific averments made in the complaints, the petitioner is very much acted as Partner of the first accused company during the transaction as such they are also equally liable for the offence committed by the first accused. Therefore, he vehemently opposed to quash the proceedings.

5.Heard Mr.R.Nalliiyappan learned counsel for the petitioner and perused the materials available on record.

6.It is seen from the complaint, it is stated that the petitioner is the partner of the first accused company and other than that no where whispered about their role on behalf of the company and simply mentioned that the petitioners are partners and they also involved in the day to day affairs of the company. When the partners are implicated as the accused to attract the offence under section 141 of Negotiable Instruments Act, there must be specific averments as against each of the partners 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.

7.The judgment relied upon the learned counsel appearing for the petitioners squarely applicable to the case on hand. In the judgment reported in 2012 Crl. 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."

8. 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 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"

9. In the case on hand no avernments as regard to the how and in what manner the petitioner is in-charge of or responsible to the first accused company for conduct of 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 141 of Negotiable Instruments Act.

10. In the light of the above discussions, this Criminal original Petition is allowed, Consequently connected Miscellaneous Petition is closed, and the proceedings in C.C.No. 71 of 2014 on the file of the Judicial Magistrate No.III, Salem is hereby quashed. Insofar as the petitioner is concerned. Considering the fact that the case is of the year 2014, the trial Court viz., Judicial Magistrate No.III, Salem is directed to complete the trial in C.C.No. 71 of 2014 as against the other accused persons, within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mpa/lpp
To
The Judicial Magistrate No.III, Salem
+1cc to Mr. R.Nalliiyappan, Advocate SR.No. 22801

Crl.O.P.No.18476 of 2014

A.SK(08/05/2019)