IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No. 19229 of 2014
and
M.P.No. 1 of 2014

1. M.Snehalata Dadha
2. S.Anjali Dadha
3. M.Madu Dadha
4. Ankush Dadha
5. M.Apoorva Dadha ... Petitioners

Vs.

Ratan Kawar
Represented by her Assistant Cum
Power of Attorney Agent
Venkatesan. ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.1991 of 2014 on the file of the learned VIII Metropolitan Magistrate, George Town at Chennai and quash the same.

For Petitioners: Mr.V.Krishnamoorthy

For Respondent : Mr.M.Arvind Kumar

O R D E R

This petition has been filed to quash the proceedings in C.C.No.1991 of 2014 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai, thereby taken cognizance for the offence under Section 138 of Negotiable Instruments Act.

2. The learned counsel appearing for the petitioners submitted that the petitioners are arraigned as accused A3, A5

to A8 in C.C.No.1991 of 2014, initiated by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. The petitioners have been implicated as an accused on their capacity of the Directors of the first accused company. The petitioners no way connected with the transactions as alleged by the respondent and they are the neither signatory of the cheque nor participated in the day to day affairs of the company.

2.1. Even according to the complaint, the fourth accused only signed the cheque. More over the fourth accused signed only in the blank stamp papers which was obtained under coercion and later on fabricated by the complainant to suit their convenience. He further submitted that even as per the complaint there is absolutely no averment that the petitioners are incharge of the company and they are actively participated in the day to day affairs of the company. Therefore, there is no liability on the petitioners to attract the offence under Section 141 of Negotiable Instruments Act. Without considering the above facts and circumstances, the learned Magistrate have taken cognizance for the offence under Section 138 r/w 141 of Negotiable Instruments Act.

2.2. Further he submitted that in fact the petitioners 1 to 3 had resigned from the company as early as on 31.03.2005 and also submitted Form-32 before the Registrar of Company. As far as the petitioners 4 and 5 are concerned they never being acted as Directors of the company and they have been falsely implicated in this case, since they happen to be the son and daughter of one M.Maher Dadha, who resigned from the company on 31.03.2005 and also filed Form-32. Therefore, prayed for quashing the entire proceedings.

3. Per contra, the learned counsel appearing for the respondent submitted that the petitioners along with other accused persons have committed offence under Section 138 of Negotiable Instruments Act. The first accused is the private company and other accused 2 to 8 are in charge of the company and they are the responsible for the conduct of day to day business affairs of the first accused company. There was an amount due towards payable by the petitioners for the value of the diamond, gold, gold jewelry and silver articles, which was jointly stolen and misappropriated by illegal broke open the complainant's locker. Pursuant to the settlement and pursuant to the letter of undertaking dated 01.07.2010, they issued 10 cheques drawn on ICICI Bank and the same were deposited for collection and the same were returned for the reasons that "Account closed". Therefore, the respondent issued statutory notice and thereafter initiated proceedings under the Negotiable Instruments Act. There are specific avernments and allegations

as against the petitioners and they are actively participated in the day to day affairs of the company and they also involved in the transactions. Therefore, they are liable to be prosecuted under Section 141 of Negotiable Instruments Act. The learned Magistrate rightly have taken cognizance as against the petitioners and as such he prayed for dismissal of the quash petition.

4. Heard Mr.V.Krishnamoorthy, learned counsel appearing for the petitioners and Mr.M.Arvind Kumar, learned counsel appearing for the respondent.

5. The petitioners are arraigned as A3, A5 to A8 in C.C.No.1991 of 2014 on the file of the learned VIII Metropolitan Magistrate Court, George Town, Chennai initiated by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. It is seen from the complaint that the first accused is the company and other accused 2 to 8 are incharge of the first accused company and responsible for the conduct of the day to day business affairs of the first accused company. Further stated that the accused 2 to 8 are looking after the day to day business affairs of the company. Except these avernments, there is no specific avernment in respect of the each and every petitioners' involvement in the business transactions. In fact, the impugned cheques were issued for the articles jointly stolen and misappropriated by the accused persons by illegal breaking open the locker of the complainant and in pursuant to the settlement. On perusal of the documents produced by the petitioners, it is seen that the petitioners 1 to 3 are resigned from their Directorship on 31.03.2005 as per the Form-32 submitted to the Registrar of Company. Whereas the letter of undertaking given by the first accused company on behalf of the other accused on 01.07.2010. Therefore, the petitioners 1 to 3 were not incharge of the company and they were not acted as Directors of the first accused company on 01.07.2010 viz., the alleged letter of undertaking given by them. Insofar as the petitioners 4 and 5 are concerned they are not being acted as Directors of the company and they happened to be the son and daughter of the resigned Director one Maher Dadha. Therefore, the petitioners 4 & 5 are not at all the Directors of the first accused company at the time of issuance of cheque as well as the issuance of letter of undertaking dated 01.07.2010.

6. In this regard, it is relevant to cite the judgment reported in (2019) 1 SCC (Cri) 568 in the case of Ashoke Mal Bafna Vs. Upper India Steel Manufacturing and Engineering Company Ltd., in which, the Hon'ble Supreme Court of India held as follows:-

"5. We have given our thoughtful consideration to the arguments advanced by the counsel on either side. The issue for determination before us is whether the role of the Appellant in the capacity of erstwhile Director of the defaulter Company makes him vicariously liable for the activities of the defaulter Company as defined Under Section 141 of the Act? In that perception, whether the Appellant had committed the offence chargeable Under Section 138 of the Act; and whether the High Court was right in dismissing the Criminal Miscellaneous application filed by the Appellant seeking quashing of the criminal proceedings?

6. Before delving into the issue further, it would be apt to look into the principles of law settled by this Court on the subject.

7. In Girdhari Lal Gupta v. D.H. Mehta and Anr. (1971) 3 SCC 189 : (AIR 1971 SC 28), this Court observed that a person 'in charge of a business' means that the person should be in overall control of the day to day business of the Company.

8. Interpreting the provisions of Section 141 this Court in National Small Industries Corporation v. Harmeet Singh Palatal and Anr. (2010) 3 SCC 330 : (AIR 2010 SC (Supp) 569) observed that Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in-charge of and responsible to the Company for the conduct of business of the Company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner the accused was in charge of or was responsible to the Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes especially where such statutes create vicarious liability.

9. 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 Devidasani v. State of Maharashtra and Ors. : AIR 2015 SC 675.]

10. 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."

7. In the case on hand, the first accused company, pursuant to the settlement by way of letter of undertaking dated 01.07.2010, issued cheques in favour of the respondent. Admittedly, as against the petitioners there is no specific allegations as to how the petitioners participated in the day to day affairs of the company and they are incharge and responsible to the company for the conduct of business. When there is a bald and vague allegations, it is not sufficient to make out a case against the petitioners. As held by Hon'ble Supreme Court of India, there must be specific avernments as against the Directors on how and what manner they responsible for the conduct of the business of the company.

8. That apart the petitioners 1 to 3 have already resigned from the first accused company and submitted their Form-32 as early as on 31.03.2005. Insofar as the petitioners 4 and 5 are concerned they have never being as Directors of the company and they are the son and daughter of one Maher Dadha, who resigned from the first accused company on 31.03.2005 itself. Therefore, the complaint cannot be sustained as against the petitioners and it is liable to be quashed.

9. In view of the above discussion, this Criminal Original Petition stands allowed and the proceedings in C.C.No.1991 of

2014 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai is hereby quashed, insofar as the petitioners are concerned. Consequently connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The VIII Metropolitan Magistrate Court,
George Town at Chennai

+2cc to Mr.V.Krishnamoorthy, Advocate, SR.No.33976
+1cc to Mr.Arvind Kumar, Advocate, SR.No.33720

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and M.P.No. 1 of 2014

Kak(30/05/2019)