

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2019

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.8838, 8839, 8840, 8841, 8842, 8843,
8844, 8845, 8846, 8847 and 8848 of 2017

and

Crl.M.P.Nos. 6341,6342, 6343, 6344, 6345, 6346, 6347,
6348, 6349, 6350, 6351, 6352, 6353, 6354, 6355,
6356, 6357, 6358, 6359, 6360 of 2017

Sarojben Hasmukh Jhaveri

Director, M/s.SMS Formulation Pvt Ltd.,

75, Mangaldas Building,

No.1, 4th Road, Princess Street,

Mumbai 400 002

... Petitioner in all Crl.O.Ps

/Vs/

M/s Modern Cargo Services Private Limited

Represented by its

Authorized Signatory V. Subramani

14, Samhita Warehousing Complex,

Off Andheri-Kurla Road, Andheri (East),

Mumbai 400 072.

... Respondent in

Crl.O.P.Nos.8838 & 8848 of 2017

M/s Modern Cargo Services Private Limited

14, Samhita Warehousing Complex,

Off Andheri-Kurla Road, Andheri (East),

Mumbai 400 072.

Represented by its

Authorized Signatory S.Babu

... Respondent in

Crl.O.P.Nos.8841,8842,8845 of 2017

M/s Modern Cargo Services Private Limited

14, Samhita Warehousing Complex,

Off Andheri-Kurla Road, Andheri (East),

Mumbai 400 072.

Represented by its Authorized

Signatory Mr.Shamnathuram Yenpure

... Respondent in

Crl.O.P.Nos.8843,8847 of 2017

M/s Modern Cargo Services Private Limited
14, Samhita Warehousing Complex,
Off Andheri-Kurla Road, Andheri (East),
Mumbai 400 072.

Represented by its Authorized

Signatory M.Subramani ... Respondent in

Crl.O.P.Nos.8839,8840,8844 & 8846 of 2017

Common Prayer: Criminal Original Petitions filed under section 482 of Criminal Procedure Code to call for the records in C.C.Nos.2107 of 2016, 3968/2016, 2106/2016,2719/2016, 2718/2016, 5869/2016, 4333/2016, 2720/2016, 4152/2016, 5870/2016 & 2720/2016, 4152/2016, 5870/2016 & 2721/2016 respectively on the file of Fast Track - I, Allikulam, XIII Metropolitan Magistrate, Chennai and quash same.

For Petitioner : Mr. C.V. Kumar
[in all Crl.OPs]

For Respondent : Mr.A.M.Amutha Ganesh
[in all Crl.OPs]

C O M M O N O R D E R

These petitions have been filed to quash the proceedings in C.C.Nos.2106, 2107, 2718, 2719, 2720, 2721, 3968, 4152, 4333, 5869, and 5870 of 2016 on the file of the learned Fast Track - I, Allikulam, Chennai.

2. The learned counsel appearing for the petitioner in all the petitions submitted that the petitioner is arraigned as accused 4 in the complaint filed by the respondent for the offence punishable under Section 138 read with section 141 of the Negotiable Instruments Act. According to the complainant, the first accused is the Company and the accused 2 to 4 are Managing Director and Directors 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(s). 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 CrI. 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. Per contra, the learned counsel appearing for the respondent/defacto complainant submitted that the complaint lodged for the offence punishable under Section 138 read with 141 of the Negotiable Instruments Act. Totally there are four accused and the petitioners are the accused 2 to 4. The first accused is the Private Limited Company and the second accused is the Managing Director of the first accused company and others are Directors 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 complaints in the above said C.C.Nos. Though no specific averments made in the complaints, the petitioners are 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. Therefore, he vehemently opposed to quash the proceedings.

4. Heard Mr.C.V.Kumar, learned counsel appearing for the petitioner in all cases and Mr.A.M.Amutha Ganesh, learned counsel appearing for the respondent in all cases.

5. The respondent filed a complaint for the offence punishable under Section 138 r/w 141 Negotiable Instruments Act as against the four accused persons, in which the petitioners are arraigned as A2 to A4. 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 petitioners are the Directions of the first accused company and other than nowhere whispered about their role on behalf of the company and simply mentioned that the petitioners are directors and they 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 141 of Negotiable Instruments Act, there must be specific averments 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 petitioners 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 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"

8. In the case on hand no averments as regard to how and in what manner the petitioners in-charge of or responsible to the first accused company for conduct of its business. The mere bald and vague allegation that the petitioners are 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.

9. In the light of the above discussions, all the Criminal Original Petitions are allowed and the proceedings in C.C.Nos.2106, 2107, 2718, 2719, 2720, 2721, 3968, 4152, 4333, 5869, and 5870 of 2016 on the file of the learned Fast Track-I, Allikulam, Chennai, respectively, are hereby quashed, as far as the petitioner is concerned. Considering the fact that the case is of the year 2016, the trial Court viz., Fast Track-I, Allikulam, Chennai, is directed to complete the trial proceedings in C.C.Nos.2106, 2107, 2718, 2719, 2720, 2721, 3968, 4152, 4333, 5869, and 5870 of 2016 on the file of the learned Fast Track-I, Allikulam, Chennai, respectively, as against the other accused persons, within a period of three months from the date of the receipt of a copy of this Order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msm

To:

1. The XIII Metropolitan Magistrate,
Fast Track - I, Allikulam, Chennai.

2. The Public Prosecutor,
High Court, Madras.

+11 cc to Mr.C.V.Kumar, Advocate, Sr.Nos. 25937 to 25947
+1 cc to M/s.Norton & Grant, Advocate, Sr.No. 26422

Crl.O.P.Nos.8838, 8839, 8840, 8841, 8842, 8843,
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NRL (CO)
CSL/20.06.2019



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