IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.03.2019

CORAM:
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.Nos. 16958 to 16963 & 17380, 17381 of 2017
and Crl.MP.Nos. 10418 to 10429 & 10633 to 10636 of 2017

R.Santhosh .. Petitioner in Crl.O.P.Nos. 16958, 16962, 16963 and 17381 of 2017/ 3rd Accused

R.Vimala ... Petitioner in Crl.O.P.Nos. 16959, 16960, 16961 and 17380 of 2017/ 4th Accused

Vs.

Mr.Gnanaiah Samuel Raj
Power Agent of S.Lakshmanan ...Respondent in Crl.O.P.Nos. 16958, 16961, 17380 and 17381 of 2017/Complainant

Mr.Gnanaiah Samuel Raj
Power Agent of M.M.M.Sheriff ...Respondent in Crl.O.P.Nos. 16959, 16960, 16962 and 16963 of 2017/Complainant

PRAYER in Crl.O.P.Nos.16958 & 16961 of 2017: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records connected with C.C.No.1266 of 2016 on the file of the Fast Track Court-III, Saidapet, Metropolitan Magistrate Court, Chennai and quash the same.

PRAYER in Crl.O.P.Nos.16959 & 16963 of 2017: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records connected with C.C.No.6875 of 2016 on the file of the Fast Track Court-I, Egmore, Metropolitan Magistrate Court, Chennai and quash the same.

PRAYER in Crl.O.P.Nos.16960 & 16962 of 2017: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records connected with C.C.No.6874 of 2016 on the file of the Fast Track Court-I, Egmore, Metropolitan Magistrate Court, Chennai and quash the same.

PRAYER in Crl.O.P.Nos.17380 & 17381 of 2017: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records connected with C.C.No.1265 of 2016 on the file of the Fast Track Court-III, Saidapet, Metropolitan Magistrate Court, Chennai and quash the same.

For Petitioner in all Crl.O.Ps. : N.P.Vijay Kumar

For Respondent in all Crl.O.Ps. : No appearance

COMMON ORDER

These petitions are filed to quash the proceedings in C.C.Nos. 6874 and 6875 of 2016 on the file of the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore, Chennai and also the proceedings in C.C.Nos.1265 and 1266 of 2016 on the file of the learned Metropolitan Magistrate, Fast Track Court No. III, Saidapet, Chennai, thereby taken cognizance for the offence punishable under Section 138 of Negotiable Instruments Act.

2. The learned Senior Counsel appearing for the petitioner in both the petitions submitted that the petitioners are not the Directors of the first accused company at the time of issuance of cheques. The petitioner in Crl.O.P.Nos. 16958, 16962, 16963 and 17381 of 2017 resigned from the first accused company as early as on 06.11.2013 and the petitioner in Crl.O.P.Nos.16959, 16960, 16961 and 17380 of 2017, resigned from the first accused company as early as on 09.04.2014 and Form No.32 also filed with the Registrar of Company. Therefore, the petitioners have no role in the alleged offence under Section 138 of Negotiable Instruments Act. Further he submitted that the petitioners are not the signatory of the cheques and even as per the complainant the loan was disbursed only upon with the second accused. There is absolutely no allegation as against the petitioners, as the petitioners did not play any role in the alleged occurrence. Therefore, the complainant cannot fasten vicarious liability on the petitioners and the complaints cannot be sustained as against the petitioners for the offence under Section 141 of Negotiable Instruments Act. Therefore, he prayed to quash the entire proceedings initiated under Section 138 of Negotiable Instruments Act.

3. Heard Mr.R.Sankaranarayanan, learned Senior Counsel appearing for the petitioner in all the petitions. Though notice has been served on the respondent, none appeared on behalf of the respondent/defacto complainant.

4. On perusal of the records, the petitioners are arraigned as A3 and A4 respectively, in C.C.Nos.1265, 1266, 6874 and 6875 of 2016 initiated by the respondent for the offence under Section 138 of Negotiable Instruments Act. The case of the

complainant is that the first accused is the company and the others are Directors and all of them actively participated in the day to day activities of the first accused company. The first accused company had approached the defacto complainant for financial assistance for their business purpose. Accordingly, the first accused availed loan and on the disbursement of the said loan, the first accused company issued cheques to the respondent. On presentation of the said cheques, it were returned dishonoured for the reason that the funds insufficient. After issuance of notice under Section 138 of Negotiable Instruments Act, the defacto complainant filed the complaint.

5. The case of the petitioners is that the petitioners are resigned from their Directorship of the first accused company on 06.11.2013 and 09.04.2014, respectively, and also filed Form No.32 before the Registrar of Company. It is seen from the complaints, on 21.06.2013 and 19.08.2013, the first accused availed loan from the respondent/defacto complainant and thereafter they issued cheques on 12.08.2015, towards repayment of the said loan. Therefore, on 12.08.2015, the petitioners were not the Directors of the first accused company. More over, the petitioners are not the signatory of the alleged cheques and on behalf of the first accused company the second accused signed the cheques in the capacity of Director.

6. Further it is also seen from the complaint that it is stated that all the Directors of the first accused company are actively participated in the day to day affairs of the company. There is no specific allegation as against the Directors to the effect that they are also participated in the transactions and attended the day to day affairs of the company. As repeatedly held by this Court and also by the Hon'ble Supreme Court of India that there must be specific allegation as against the each of the Directors of the company to attract the offence under Section 141 of Negotiable Instruments Act. 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."

7. In 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., the Hon'ble Supreme Court of India held 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, admittedly the petitioners are resigned from the Directorship as early as on 06.11.2013 and 09.04.2014, respectively, i.e., before the issuance of the cheque dated 12.08.2015. Therefore the complaint cannot be sustained on this ground alone.

9. In view of the above discussions, these Criminal Original Petitions stand allowed and the proceedings C.C.Nos. 6874 and 6875 of 2016 on the file of the learned Metropolitan Magistrate, Fast Track Court No. I, Egmore, Chennai and C.C.Nos.1265 and 1266 of 2016 on the file of the learned Metropolitan Magistrate, Fast Track Court No. III, Saidapet, Chennai are hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rts

1. The Metropolitan Magistrate Court,
   Fast Track Court No. I,
   Egmore, Chennai.

2. The Metropolitan Magistrate Court,
   Fast Track Court No. III,
   Saidapet, Chennai.

+5ccs to Mr.N.P.Vijayakumar, Advocate, S.R.No.21398

CRL.O.P.Nos. 16958 to 16963
& 17380, 17381 of 2017
and Crl.MP.Nos. 10418 to 10429
& 10633 to 10636 of 2017

CA(CO)

RRS(24/04/2019)