IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.1068 of 2014 and
M.P.Nos.1 & 2 of 2014

1.S.A.Natarajan
2.S.A.Palanisamy
3.V.Venkatachalapathy ... Petitioners

Vs.

P.Boopathi Raja ...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.248 of 2013 on the file of the Judicial Magistrate, Dharapuram insofar as the petitioners/Accused 2, 4 and 5 are concerned and to quash the same.

For Petitioners : Mr.A.K.Kumaraswamy

For Respondent : No Appearance

ORDER

This petition has been filed to quash the proceedings in C.C.No.248 of 2013 on the file of the learned Judicial Magistrate, Dharapuram, Tiruppur arising out of the offence under Section 138 of the Negotiable Instruments Act.

2. Mr.A.K.Kumaraswamy, the learned counsel for the petitioners would submit that the petitioners are arrayed as accused 2, 4 and 5 in the complaint. The respondent filed a complaint for the offences under Sectios 138 of the Negotiable Instruments Act alleging that the accused 2 to 6 were partners of the company. The company is arrayed as first accused. The third accused is said to have borrowed a sum of Rs.2 lakhs to meet out the urgent expenses of the first accused company on 01.12.2012. To discharge the said loan, the third accused on behalf of the first accused issued a cheque for the said sum and the said cheque was presented for collection. It was returned default for the reason 'funds insufficient'. Hence, the complaint.

3. The learned counsel for the petitioners further submits that insofar as the petitioners are concerned, they have no role

in the day to day affairs of the first accused company. Admittedly, the third accused was the managing partner of the first accused company and issued cheque for the said sum. Further he submitted that even according to the complainant and sworn statement of the complainant there is absolutely no specific allegations as against the petitioners and they have no rule to play in the first accused company. Therefore, he prayed for quashment of the complaint.

4.Though notice was served, no one appeared for the respondent.

5. Heard, Mr.A.K.Kumaraswamy, the learned counsel for the petitioners.

6. The petitioners are arrayed as accused 2, 4 and 5. It is seen from the complaint that the first accused is the company and others are partners of the said company. They are all doing business jointly in the name and style of Sri Meenatshi Exports. The third accused borrowed a sum of Rs.2 lakhs to meet out the first accused company's urgent expenses. To repay the said amount the third accused issued cheque from the first accused company's account and said cheque was returned dishonoured as 'funds insufficient'. Hence, the complaint.

7. As pointed out by the learned counsel for the petitioner, there is no specific allegations or averments as against the petitioners in the complaint. It is also silent about the role played by the petitioners on behalf of the first accused company. The complainant also failed to state whether the petitioners are involved in the day to day affairs of the first accused company or not.

8. In this regard, the learned counsel for the petitioners relied upon the judgment in the case of S.M.S.Pharmaceuticals Ltd Vs. Neeta Bhalla and another reported in 2005 (5) CTC 65, in which the Hon'ble Supreme Court of India has held as follows:

> "13.A reference to sub-section (2) of Section 141 fortifies the above reasoning because sub-section (2) envisages direct involvement of any Director, Manager, Secretary or other officer of a company in commission of an offence. This section operates when in a trial it is proved that the offence has been committed with the consent or connivance or is attributable to neglect on the part of any of the holders of these offices in a company. In such a case, such persons are to be held liable. Provision has been made for Directors, Managers, Secretaries and other officers of a company to cover them in cases of their proved involvement.
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> 14. The conclusion is inevitable that the

liability arises on account of conduct , act or omission on the part of a person and not merely on account of holding an office or a position in a company. Therefore, in order to bring a case within Section 141 of the Act the complaint must disclose the necessary facts which make a person liable.

15. The question of what should be averments in a criminal complaint has come up for consideration before various High Courts in the country as also before this Court. Secunderabad Health Care Ltd. and others v. Secunderabad Hospitals Pvt. Ltd. and others [1999 (96) C.C.(AP) 106] was a case under the Negotiable Instruments Act specifically dealing with Sections 138 and 141 thereof. The Andhra Pradesh High Court held that every Director of a company is not automatically vicariously liable for the offence committed by the company. Only such Directors or Director who were in charge of or responsible to the company for the conduct of business of the company at the material time when the offence was committed alone shall be deemed to be guilty of the offence. Further it was observed that the requirement of law is that

"there must be clear, unambiguous and specific allegations against the persons who are impleaded as accused that they were in charge of and responsible to the company in the conduct of its business in the material time when the offence was committed."

The same High Court in v. Sudheer Reddy v. State of Andhra Pradesh and others [2000 (99) CC (AP)107] held that "the purpose of Section 141 of the Negotiable Instruments Act would appear to be that a person who appears to be merely a director of the Company cannot be fastened with criminal liability for an offence under Section 138 of the Negotiable Instruments Act unless it is shown that he was involved in the day-today affairs of the company and was responsible to the company." Further, it was held that allegations in this behalf have to be made in a complaint before process can be issued against a person in a complaint. To same effect is the judgment of the Madras High Court in R. Kannan v. Kotak Mahindra Finance Ltd. 2003 (115) CC (Mad) 321. In Lok Housing and Constructions Ltd. v. Raghupati Leasing and Finance Ltd. and another [2003 (115) CC (Del) 957], the Delhi High Court noticed that there were clear averments about the fact that accused No.2 to 12 were officers in charge of and responsible to the company in the conduct of day-to-day business at the time of commission of offence. Therefore, the Court refused to quash the complaint. In Sunil Kumar Chhaparia v. Dakka Eshwaraiah and another [2002 (108) CC (AP) 687, the Andhra Pradesh High Court noted that there was a consensus of judicial opinion that

" a director of a company cannot be prosecuted for an offence under Section 138 of the Act in the absence of a specific allegation in the complaint that he was in charge of and responsible to the company in the conduct of its business at the relevant time or that the offence was committed with his consent or connivance."

"20. In view of the above discussion, our answers to the questions posed in the Reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."

9. The above judgment is squarely applicable to the case on hand. In the present complaint also there is no averment made

as against the petitioners as required under Section 141 of the Negotiable Instruments Act. Further admittedly the third accused only issued cheque on behalf of the company, by virtue of the third accused hold as Managing Director of the first accused company. She is in charge and responsible for the conduct of the business of the company. Therefore, the complaint cannot be sustainable as against the petitioners. Since there are no averments against them except stating in the cause title that they are partners of the company. Further there is no avernment that the petitioners were in charge of the business and were responsible for the conduct of the business of the company nor was there any allegation that the petitioners had connived with the third accused in the matter of issuance of cheque.

10. In view of the above discussions, this Criminal Original Petition is allowed as such the proceedings in C.C.No.248 of 2013 on the file of the Judicial Magistrate, Dharapuram is quashed as against the petitioners alone. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate,
Judicial Magistrate Court,
Dharapuram

+1cc to Mr.S.Kaithamalai Kumaran, Advocate sr.no.15654

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M.P.Nos.1 & 2 of 2014

rsv(co)
nr 04/04/2019