BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.10.2019
CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl OP(MD)No.10490 of 2015
and
MP(MD)No.1 of 2015

1.K.Kaliraj

2.R.Vasudevan

3.L.Kamalakannan

4.J.Ramnarayanan

5.K.Amarnath

6.S.S.Vanagamudi

7.C.T.Muthuraman

8.R.Navaneetha Krishnan

9.Usha Srinivasan

10.R.N.Manivannan ... Petitioners / Accused Nos.3 to 10

Vs.

M/s.Madurai Meenakshi & Co.,
Rep.by its Partner,
R.Sundaresan ... Respondent / Complainant

Prayer : Criminal Original Petition is filed under Section 482 of Cr.PC to call for the records in STC No.93 of 2015 on the file of the Judicial Magistrate, Fast Track Court, Theni and quash the same.

(Prayer is amended as per the order of this court dated 31.10.2019 in Crl MP(MD)No.8955 of 2019)

For Petitioners : Mr.C.Muthu Saravanan

For Respondent : Mr.T.Lajapathi Roy

ORDER

The respondent herein, namely, Madurai Meenakshi & Company represented by its partner R.Sundaresan filed STC No.93 of 2015 on the file of the Judicial Magistrate, Fast Track Court for the offence under Section 138 of the Negotiable Instruments Act, r/w.141 of the Act against Shri.Renuga Textiles Limited and its Managing Director and other Directors.

2.The case of the complainant is that the complainant firm had supplied dyes and chemicals to the accused company. The accused company towards discharge of its liability which was quantified at Rs.36,27,460/-, issued the complaint cheque bearing No.562441 drawn at ICICI Bank Limited, Theni Branch dated 14.11.2014 favoring the complainant. The complainant has presented the cheque in question for collection. But, it was dishonored. After following the usual formalities, the complainant filed the impugned private complaint. The company has been shown as the first accused while its Managing Director as the second accused. The petitioners herein are figuring as A3 to A10 in the said private complaint. To quash the same, this original petition has been filed.

3.Heard the learned counsel on either side.

4.The learned counsel for the petitioners submitted that the averments set out in the impugned complaint are not sufficient to fasten any penal liability on the petitioners herein. Per contra, the learned counsel appearing for the complainant drew my attention to the paragraph Nos.3 and 10 of the impugned complaint. In the said paragraphs, it has been averred that A2 to A12 were involved and engaged in the day to day affairs of the business of the accused company. The learned counsel for the complainant placed reliance on the very recent decision rendered by the Hon'ble Supreme Court reported in ***AIR 2019 SC 2518 (A.R. Radha Krishna Vs. Dasari Deepthi and Ors)***. The High Court had quashed the complaint on the ground that the averments set out in the complaint are not sufficient. Setting aside the order passed by the High Court, the Hon'ble Supreme Court observed as follows :

> “10.A perusal of the record in the present case indicates that the Appellant has specifically averred in his complaint that the Respondent Nos. 1 and 2 were actively participating in the day-today affairs of the Accused No. 1 company. Further, the Accused Nos. 2 to 4 (including the Respondent Nos. 1 and 2 herein) are alleged to be from the same family and running the Accused No. 1 company together. The complaint also specifies that all the accused, in active connivance, mischievously and intentionally issued the cheques in favor of the Appellant and later issued instructions to the Bank to "Stop Payment". No evidence of unimpeachable quality has

been brought on record by the Respondent Nos. 1 and 2 to indicate that allowing the proceedings to continue would be an abuse of process of the court."

5.In the very same decision relied on by the counsel for the complainant, the Hon'ble Supreme Court had also observed that the law requires that the complaint must contain a specific averment that the Director was in charge of, and responsible for, the conduct of the company's business at the time when the offence was committed. The learned counsel for the complainant also drew my attention to the decision of the Hon'ble Supreme Court reported in ***(2005) 8 SCC 89 (S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Ors***). Before the Hon'ble Supreme Court, the following issues were referred for consideration :

"(a) whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfill the requirements of the said section and it is not necessary to specifically state in the complaint that the persons accused was in charge of, or responsible for, the conduct of the business of the company.

(b) whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.

(c) even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the Managing Directors of Joint Managing Director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against."

Answering the reference, the Hon'ble Supreme Court held as follows :

"(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."

6.Thus, it is now beyond dispute that specific averments that the Director was in charge and responsible for the conduct of the business of the company is an essential requirement as per Section 141 of the Act and has to be made in the complaint. If this averment is not there in the complaint, the requirement of Section 141 of the Act cannot be said to be satisfied. It was further held that merely because someone was a Director in a company, it cannot be deemed that he was in-charge and responsible for the conduct of its business. In the case on hand, even though the complainant had named the petitioners herein as Directors of the company, there cannot be any deeming conclusion that they were in-charge and responsible for the company and conduct of its business. Mere averment that the petitioners herein were involved in the day to day affairs of the business of the company and that they were involved and engaged, is not sufficient to meet the requirements set out in Section 141 of the Negotiable Instruments Act, 1881. Being involved and engaged is one thing ; being in-charge and responsible is another. Section 141 of the Negotiable Instruments Act incorporates the principle of vicarious liability and it will kick in only if the accused is in-charge and responsible for the conduct of the business of the company and its affairs. That is absent in this case.

7.In this view of the matter, continuance of the impugned prosecution against the petitioners would be an abuse of legal process as far as the petitioners herein are concerned. Of course, it will go on against the remaining accused. This quash petition was filed in the year 2015. Interim stay was granted. Hence, the impugned complaint was split up as far as the petitioners are concerned. A new STC No.93 of 2015 was assigned. The impugned complaint in STC No.93 of 2015 stands quashed. Of course, STC No.67 of 2015 will go on. Since the case has been pending for quite sometime, the learned Judicial Magistrate, Fast Track Court, Theni shall conclude the trial on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

8.The criminal original petition stands allowed. Consequently, connected miscellaneous petition stands closed.

Sd/-
Assistant Registrar (CS-II)

// True Copy //

/ /2020
Sub Assistant Registrar(CS)

To

The Judicial Magistrate, Fast Track Court,
Theni.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-95402[F] dated 01/11/2019)

+1 CC to M/s.C.MUTHU SARAVANAN, Advocate (SR-95575[F] dated 01/11/2019)

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SDS (04.06.2020) 5P-4C