BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)Nos.10673 & 10674 of 2018

and

Crl.M.P.(MD)Nos.4788, 4789, 4790 & 4791 of 2018

Mr.Jegadish Gopal,
Director,
M/s.Surana Corporation Limited,
No.29, Whites Road, 2nd Floor,
Rayapettah,Chennai-14. ... Petitioner/Accused No.3
(In both Crl.O.Ps)

-Vs-

M/s.Bhima Jewellery,
A Partnership Firm,
Rep by its Power of Attorney,
Internal Auditor,Mr.G.Veeraputhiran,
No.137, West Masi Street, Madurai-625001.
(Vilakkuthoon Police Station) ... Respondent/Complainant
(In Crl.OP(MD)No.10673 of 2018)

M/s.Bhima Jewellery,
A Partnership Firm,
Rep by its Power of Attorney/Manager,
Mr.P.Senrayan (Amended as per order passed in
Cr.M.P.No.4815/2016 dated 16.11.2016)
No.137, West Masi Street, Madurai-625001.
(Vilakkuthoon Police Station)
... Respondent/Complainant
(In Crl.OP(MD)No.10674 of 2018)

Common Prayer: Criminal Original petitions filed under Section 482 of Code of Criminal Procedure, to call for the records in S.T.C.No.546 of 2015 and S.T.C.No.577 of 2015 on the file of the learned Fast Track Court, No.1 (Magisterial Level) Madurai and quash the same asfar as this petitioner is concerned.

For Petitioner : Mr.C.Muthusaravanan
(In both Crl.O.Ps)

For Respondent : Mr.Chamundi Bose
(In both Crl.O.Ps)

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in S.T.C.No.546 of 2015 and S.T.C.No.577 of 2015 on the file of the learned Fast Track Court No.1 (Magisterial Level) Madurai.

2. The learned counsel for the petitioner would submit that there are totally four accused, in which, the petitioner arrayed as third accused. The respondent lodged a complaint alleging that the first accused engaged in importing standard quality of gold and silver. The respondent is running a jewelry shop in the name and style of "Bhima Jewelry" and used to purchase gold from the accused. The first accused supplied importing standard quality of gold to the respondent jewelry shop. In which, the respondent also advanced to the tune of 5 Crores on the purchase of jewels. Towards the payment of the said amount, the second accused issued a cheque and the same was presented for collection in the bank, that was returned to the complainant for the reason that funds insufficient in the account of the accused. Thereafter, a common statutory legal notice was sent to the accused 1 to 4 and initiated proceedings under Section 138 of the Negotiable Instruments Act.

3. The learned counsel for the petitioner would further submit that the complaint allegedly filed under Section 138 r/w 141 of Negotiable Instruments Act. When the complaint was filed under Section 141, it must be stated the specific over act as against each accused.

4. Admittedly, the petitioner is one of the Director of M/s.Surana Corporation Limited viz., the first accused and who never actively participated in the day to day affairs of the Company. The said Company was managed by the Managing Director namely, the second accused. Further, there is absolutely no specific allegation and specific averment as against the petitioner in the complaint as such the complaint cannot be sustained as against the petitioner. He relied upon the judgment in the case of **Ashoke Mal Bafna Vs. M/s.Upper India Steel Mfg. & Engg. Cvo.Ltd** reported in **AIR 2017 SC (Criminal) 1160** and in the case of **Maheshchandra Mulkraj Julka alias M.C.Julka Vs. M/s.Redigton (India) Ltd., Guindy** reported in **2019 ACD 762 (MAD)**.

5. Per contra, the learned counsel for the respondent would submit that the accused persons issued cheque towards re-payment of the advance amount paid by the respondent infavour of the petitioner. On instructions, it was presented and the same was returned for the reason 'insufficient funds'. Therefore, the respondent sent statutory notice to all the accused persons and initiated proceedings under the Negotiable Instruments Act. Infact, after receipt of the statutory notice, the accused person neither

sent any reply to the statutory notice nor make the payment for the dis-honoured cheque amount. He further submitted that the petitioner is none other than the Director of the first accused Company and he involved actively in the day-to-day activities of the first accused's Company. Though, he is not signatory to the first accused Company, he is one of the main Director and as such he is also liable to pay the amount under the Negotiable Instruments Act. He further submitted that the points raised by the petitioner can be considered only during the trial and not before this Court under 482 of Cr.P.C.

6. Heard Mr.C.Muthusaravanan, learned counsel appearing for the petitioner and Mr.Chamundi Bose, learned counsel appearing for the respondent.

7. There are totally four accused in which the petitioner arrayed as fourth accused in the proceedings, initiated by the respondent under Negotiable Instruments Act in S.T.C,No.579 / 2015 on the file of the Fast Track Court No.1 (Magisterial Level) Madurai.

8. According to the respondent / complainant, the advance amount to purchase jewels from the accused and towards the return of the said advance amount on behalf of the accused as on the capacity of the Managing Director issued cheque. It was presented for collection and the same was returned for the reason of insufficient funds. After, causing statutory notice, the respondent initiated proceedings under Section 138 of Negotiable Instruments Act as against the four accused persons. It is seen from the complaint, the allegation made as against all the accused persons stated in paragraph 8 of the complaint, read as follows;-

> *"8. It is submitted that the 1st accused is a Company, the second accused is the Managing Director, the third accused is the Director and the fourth accused is the Additional Director of M/S.Surana Corporation Limited. The 2 to 4 Accused are responsible for conduct of the business of the 1st accused Company and are deemed to be guilty of the offence punishable under Section 138 red with Section 141 of the Negotiable Instruments Act, 1881. It is submitted that the offence was committed by the 2 to 4 accused with full knowledge and with their consent and connivance."*

9. It is seen from the above, there is no specific allegations and no specific averments as against the petitioner with regard to his participation in the day-to-day participation of the first accused Company. In the absence of the specific averments in the complaint about the involvement of the petitioner in activities of the Company, the entire proceedings as against the petitioner is vitiated and liable to be quashed.

10. The learned counsel for the petitioner relied upon the judgment reported in **AIR 2017 SC (Criminal) 1160**, in which Hon'ble Supreme Court of India held as follows:-

> *"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.*
>
> *13. Before summoning an accused under Section 138 of the Act, the Magistrate is expected to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and then to proceed further with proper application of mind to the legal principles on the issue. Impliedly, it is necessary for Courts to ensure strict compliance of the statutory requirements as well as settled principles of law before making a person vicariously liable.*
>
> *14. The superior Courts should maintain purity in the administration of Justice and should not allow abuse of the process of Court. Looking at the facts of the present case in the light of settled principles of law, we are of the view that this is a fit case for quashing the complaint. The High Court ought to have allowed the criminal miscellaneous application of the appellant because of the absence of clear particulars about role of the appellant at the relevant time in the day to day affairs of the Company."*

11. Relying upon the judgment, this Court can follow the above dictum laid down by the order.

12. The discussion above in the case on hand, there is no specific allegation as to how the petitioner participated in the day-to-day activities of the Company. He was in-charge in response to the Company for the conduct of business. When there is no such specific averments as against the petitioner, the present complaint cannot be sustained as against the petitioner. Further the allegation made in the Complaint is baled and vague and it is not sufficient to make out a case as against the petitioner to prosecute him under the Negotiable Instruments Act.

13. In view of the discussion, the proceedings in S.T.C.No.546 of 2015 and S.T.C.No.577 of 2015 on the file of the learned Fast

Track Court No.1 (Magisterial Level) Madurai, is hereby quashed insofar as the petitioner alone. Accordingly, these petitions are allowed.

14. The trial Court is directed to proceed with a trial as against the other accused persons and complete the same within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (AD II)

// True Copy //

Sub Assistant Registrar(CS)

dss

To

1.The Fast Track Court No.1,
(Magisterial Level),
Madurai.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.CHAMUNDI BOSE, Advocate (SR-90069[F] dated 27/09/2019)

+1 CC to M/s.C.MUTHU SARAVANAN, Advocate (SR-90032[F] dated 27/09/2019)

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