BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.10.2019
CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P(MD)No.14897 of 2017
and
CRL.M.P(MD)Nos.9923 of 2017

J.Sriram,
General Manager,
Leitwind Sriram Manufacturing Ltd.,
18/3, Ivth Floor,
Singapiachi Building,
Rukmani Lakshmipatty Road,
Egmore,
Chennai - 600 008. ... Petitioner/Accused No.2

Vs.

R.Veeraputhiran ... Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to S.T.C.No.1186/2017 on the file of the Judicial Magistrate Court, Alangulam and quash the same.

For Petitioner : Mr.Ajmal Khan, Senior counsel
for Mr.T.Sakthi Kumaran
For Respondent : Mr.D.Venkatesan

ORDER

This Criminal Original Petition has been filed seeking to quash the S.T.C.No.1186 of 2017 on the file of the Judicial Magistrate, Alangulam.

2.The respondent has filed a complaint under Section 138 of the Negotiable Instruments Act against four accused persons and the petitioner have been arrayed as A2 in his capacity as the General Manager of the A1 Company.

3.The allegations found in the complaint reveals the fact that it was A3 and A4 who are the authorised representatives of the A1 Company and they are the signatories in the cheque. The petitioner has been made as an accused only on the ground that he was General Manager of the Company during the relevant point of time and he had participated in the negotiations which took place between the Company and the respondent.

4.The learned counsel for the petitioner submitted that the authorised signatories who have signed in the cheque are A3 and A4 and the petitioner is only a General Manager and he is not in any way involved in the day to day affairs of the A1 Company. The learned counsel further submitted that the General Manager of the Company cannot be made vicariously liable and he cannot be treated on par with the Directors of the Company, since the petitioner is working under the Directors of the Company and he can only act upon the directions of the Board of Directors and he cannot independently take any decisions. Therefore, the learned counsel submitted that the proceedings as against the petitioner is an abuse of process of Court.

5.The learned counsel appearing on behalf of the respondent submitted that the petitioner had actively taken part in the negotiations that happened between the A1 Company and the respondent and memorandum of understanding was also entered into between the parties. The learned counsel submitted that the petitioner was involved in the day to day affairs of the Company and therefore he has to necessarily face the consequences and the petitioner will squarely fall within the category of the "Officers" as contemplated under Section 141 of the Negotiable Instruments Act.

6.This Court has carefully considered the submissions made on either side and materials available on record.

7.The only ground that requires consideration of this Court is as to whether the petitioner who is holding the post of the General Manager in the A1 Company should be made to face the private complaint filed by the respondent for an offence under Section 138 of the Negotiable Instruments Act?

8.In this case, admittedly, the signatories of the cheque are A3 and A4 and they have signed the cheque on behalf of the A1 Company. The petitioner has been made as an accused only on the ground that he also participated during the negotiation process. If the petitioner has to be made as an accused in this case, he has to fall within Section 141 of the Negotiable Instruments Act. The Section 141 of the Act provides that every person who, at the time when the offence was committed, was in charge of, and responsible to, the Company for the conduct of the business of the Company, shall be deemed to be guilty of the offence. The provision will take within its fold, the Directors of the company and also the other officers of the Company.

9.It will be relevant to take note of the Judgment of the Honourable Supreme Court in ***K.K.Ahuja Vs. V.K.Vora & Another*** reported in ***(2009) 10 SCC 48***. The relevant portion of the judgment is extracted hereunder.

"20. The position under section 141 of the Act can

be summarized thus :
(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix `Managing' to the word `Director' makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.
(ii)In the case of a director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.
(iii) In the case of a Director, Secretary or Manager (as defined in Sec. 2(24) of the Companies Act) or a person referred to in clauses (e) and (f) of section 5 of Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under section 141(1). No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.
(iv)Other Officers of a company can not be made liable under sub-section (1) of section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, be averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.
....
22. A Deputy General Manger is not a person who is responsible to the company for the conduct of the business of the company. He does not fall under any

of the categories (a) to (g) listed in section 5 of the Companies Act (extracted in para 14 above). Therefore the question whether he was in charge of the business of the company or not, is irrelevant. He cannot be made vicariously liable under Section 141(1) of the Act. If he has to be made liable under Section 141(2), the necessary averments relating to consent/connivance/negligence should have been made. In this case, no such averment is made. Hence the first respondent, who was the Deputy General Manger, could not be prosecuted either under sub-section (1) or under sub- section (2) of Section 141 of the Act."

10.It is clear from the above judgment that a General Manager cannot be called as a person who is responsible to the Company for the conduct of the business. He does not fall within any of the categories (a) to (g). Therefore, he cannot be made vicariously liable under Section 141 (1) of the Negotiable Instruments Act. The judgment of the Honourable Supreme Court referred supra will squarely apply to the facts of the present case.

11.Therefore, the continuation of the proceedings in this case will amount to an abuse of process of Court and therefore, it requires the interference of this Court in exercise of its jurisdiction under Section 482 of IPC.

12.In the result, the proceedings in S.T.C.No.1186 of 2017 on the file of the Judicial Magistrate, Alangulam, is hereby quashed insofar as the petitioner is concerned. The Court below is directed to proceed against the other accused persons and complete the proceedings in S.T.C.No.1186 of 2017, within a period of three months from the date of receipt of a copy of this order. Accordingly this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To
The Judicial Magistrate, Alangulam.

+1 CC to Mr.T.SAKTHI KUMARAN, Advocate (SR-94421[F] dated 24/10/2019)

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