IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.O.P.No.16088 of 2013 and
M.P.No.1 of 2013

M.S.Gunasekaran ... Petitioner

Vs.

Union Bank of India
Overseas Branch
Rep.by its Assistant General Manager,
A.Rajendran, Riaz Garden,
Kodambakkam High Road,
Chennai - 600 034. ... Respondent

PRAYER: Criminal Originalc Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.44 of 2013 pending on the file of the II Fast Track Court, Egmore, Chennai, and quash the same.

For Petitioner : Mr.D.Ferdinand for
M/s.BFS Legal

For Respondent : Mr.A.V.Arun - No Appearance

ORDER

The respondent is complainant and petitioner is 4th accused. The respondent filed a private complaint against the petitioner and three others under Section 200 of Cr.P.C for the offence punishable under Section 138 of Negotiable Instruments Act before the learned Metropolitan Magistrate, Egmore. The learned Magistrate taken cognizance on the complaint in C.C.No.44 of 2013. During pendency of the above case, A4 has approached this Court to quash the proceedings against him.

2 The learned counsel appearing for the petitioner would submit that the petitioner was a Director, but, even, prior to disputed transaction on 02.07.2009, he sent his resignation to the Board of Directors and resolution was passed on 30.07.2009, which was uploaded in the official website of Registrar of Companies and Form-32 was also issued. Since on the date of

disputed transaction and issuance of cheque, the petitioner has resigned from the post of Director, there is no vicarious liability on the part of the petitioner. To support his contentions, the learned counsel relied on the decisions rendered by this Court and also the Hon'ble Supreme Court reported in the following cases:

1. (2010) 3 SCC 330 (National Small Industries Corp. Ltd., vs. Harmeet Singh Paintal and others)

2. MANU/TN/0004/1976 (S.S.Lakshmana Pillai vs. Registrar of Companies and another)

3. (2010) 11 SCC 203 (Central Bank of India vs. Asian Global Ltd., and others)

4. MANU/TN/9538/2006 (B.Raman & others vs. Shasun Chemicals and Drugs Ltd., Chennai)

5. (2008) 8 SCC 1 (DCM Financial Services Ltd., vs. J.N.Sareen and others)

6. (2015) 1 SCC 103 (Gunmala Sales Private Ltd., vs. Anu Metha)

7. (2011) 3 SCC 35 (Harshendra Kumar D. vs. Rebatilata Koley and others)

8. (2007) 3 SCC 693 (Saroj Kumar Poddar vs. State (NCT of Delhi) and others)

Relying on the above citations, the learned counsel contended that who is the Director at the relevant point of time has to be prosecuted and not others.

3 None appeared on behalf of the respondent. Heard the learned counsel appearing for petitioner and perused the materials available on record.

4 It is the main contention of the petitioner that he is not the Director at the time of disputed transaction and issuance of cheque and he is not liable to be prosecuted. Further he contended that the petitioner resigned from the post of Director and Form 32 was also issued. On reading of the complaint filed by the respondent, it is clear that the respondent has made clear allegations and it is relevant to extract paragraph Nos.4 & 5.

> "4. The first accused is a private limited company represented by its Managing Director and

> the accused 2 to 4 are the Directors of the Company, while the fourth accused is the promoter of the company and all of them are in charge of the day to day affairs of the company and responsible for the transactions of the first accused company and hence the accused 2 to 4 are jointly and severally liable to be prosecuted for and on behalf of the first accused company.
>
> 5. The first accused company is a constituent of the complainant bank which availed certain credit facilities for the purpose of the business and the accused 2 to 4 have given their personal guarantees for the due repayment of the loan due to the complainant bank. Further another Private Limited Company viz. Taurus G.K.K.Leathers Pvt. Ltd., in which 2 to 4 are directors is also a constituent of the complainant Bank and availed various credit facilities. The securities given by the borrowers, the above said 2 companies are common and both the companies have mutually guaranteed the repayment of the loans of the other."

5 From the above, it is clear that the company has availed some credit facilities and the accused 2 to 4 have given their personal guarantee and the petitioner herein, who is A4 has also given his personal guarantee for the credit facilities availed by the A1 company. Even though the petitioner has stated that he resigned from Directorship of the company, but, the fact remains that at the time of availing loan, he was a Director for which, he has given personal guarantee and after resignation of the petitioner, the Company has availed some transaction with the respondent/bank. Further there is no document to show that the Board of Directors of the company have sent the resignation of the petitioner and the resolution to the Registrar of Company and the same was accepted by the authority. Further the resignation of the petitioner was not properly communicated to the Bank, where, the petitioner has given his personal guarantee and the petitioner is liable to satisfy his personal guarantee. This Court is of the view that whether the petitioner is aware of the credit facilities availed by the Bank and whether he has given personal security for the loan as alleged by the respondent is a matter for trial. There is no quarrel with the decisions referred to by the learned counsel appearing for the petitioner, but the same are not helpful to the present case on hand, which has peculiar facts. Under these circumstances, this Court is not inclined to invoke power under Section 482 of Cr.P.C.

6 For the foregoing reasons, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed. However, the petitioner is at liberty to raise all his defence before the trial Court.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Presiding Officer,
II Fast Track Court, Egmore, Chennai.

2.The Metropolitan Magistrate,
Egmore, Chennai.

Copy To: The Section Officer, V.R.Section,
High Court of Madras, Chennai -104.

+1 cc to M/s.A.V.Arun, Advocate Sr.No. 1381

AKM/03.03.2020/4P-4C /

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