IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.Nos. 27610 & 27617 of 2011
and
Crl.M.P.Nos. 1, 1 & 2 of 2011

SO.Sivasubramaniam ... Petitioners/Accused No.4 in both Criminal Original Petitions

Vs.

Mr.V.N.Ayyadurai (a firm) Represented by its Partner
Represented by Power of Attorney-Cum-Manager
R.Sasikumar
Erode-638004. ... Respondents/Coimplainant in both Criminal Original Petitions

Common Prayer: Petitions filed under Section 482 of Cr.P.C., seeking to call for the records and quash the proceedings in S.T.C.Nos. 1350 & 1363 of 2010 on the file of the Judicial Magistrate No.1, Erode.

For Petitioners : Mr.R.John Sathyan

For Respondents : No Appearance

C O M M O N O R D E R

The criminal original petitions have been filed to call for the records and to quash the proceedings in S.T.C.Nos. 1350 and 1363 of 2010 on the file of the learned Judicial Magistrate No.1, Erode.

2. The case of the petitioner (A4) is that he is a Director of A1 Company. The Accused (A1) Company purchased textile Chemicals and in the course of business, allegedly incurred a liability of Rs.23,84,064/- and in partial discharge of the liability, the 1st Accused company issued 15 cheques from July 2010 to October 2010 totally sum of Rs.21,03,695/- and they were presented for collection on 13.10.2010 and 12.10.2010 respectively with the complainant's Bank, M/s.Tamil Nadu Mercantile Bank Ltd., Erode Branch and the same was returned with an endorsement "insufficient funds" on 14.10.2010 and 13.10.2010. The Complainant issued a statutory demand notice on

01.11.2010 and 30.10.2010 respectively and the same were returned unclaimed. The 1st accused failed to repay the amount within the statutory period for repayment, hence the complaint was filed and taken on file by the learned Judicial Magistrate No.1, Erode after compliance of all statutory obligations.

3. The learned counsel for the petitioner would submit that the petitioner is aged about 66 years and due to old age, he resigned from the directorship with effect from 28.03.2010 vide Form-32 and the same was submitted online to the Registrar of Companies on 02.08.2010. Therefore he would submit that the petitioner, admittedly, resigned from the directorship of the 1st accused company and has not committed any offence as alleged by the complainant.

4. There is no representation on behalf of the respondents.

5. In the case of Ashok Muthanna, Managing Director, M/s.Fidelity Industries Limited and three others Vs. Wipra Finance Limited by Area Manager, Chennai-18 [2001-1-LW-Crl-603], the Honourable Supreme Court relied on another decision in the case of Satish Mehra Vs. Delhi Administration and another reported in 1996-93-Crimes-85-SC and held that the Court is within its powers to consider even materials which the accused may produce even before the commencement of trial for the purpose of deciding whether the accused could be discharged, when those documents are not in dispute.

6. In the case on hand, as discussed above, the document viz. Form-32, a certified copy of which is filed by the Petitioner, would reveal that the Petitioner was not the Director who was incharge and responsible for the day to day affairs of the Company during the relevant period when the cheque was issued. The Honourable Supreme Court even in the decision rendered in the case of SMS Pharmaceutical Limited Vs. Neeta Bhalla and another reported in 2005-8-SCC-89 has held as under:-

> "with a view to make a Director of a Company vicariously liable for the acts of the Company, it was obligatory on the part of the complainant to make specific allegations as are required in law."

7. In another decision rendered in the case of N.K.Wahi Vs. Shekahr Singh and others (2007-2-SC-811), the Honourable Supreme Court has held as under:

> "To launch a prosecution therefore, against the alleged Directors must be a specific allegation in the complaint as to the part

played by them in the transaction. There should be clear and unambiguous allegation."

8. The Honourable Supreme Court has also held in another decision rendered in the case of Saroj Kumar Poddar Vs. State (NCT of Delhi reported in 2007-1-CTC-529 has held as under:-

> "13. The purported averments which have been made in the complaint petitions so as to make the appellant vicariously liable for the offence committed by the Company read as under:-
>
> " That the accused No.1 is a public Limited Company incorporated and registered under the Companies Act, 1956 and the accused 2 to 8 are/were its Directors at the relevant time and the said Company is managed by the Board of Directors and they are responsible for the in charge of the conduct and business of the Company accused No.1. However, cheques referred to in the complaint have been signed by the accused NO.3 and 8 i.e. Shri K.K.Pilania and Shri N.K.Munjal for and on behalf of the accused Company No.1"
>
> 14. .... there is no averment in the complaint petition as to how and in what manner the appellant was responsible for the conduct of the business of the Company or otherwise responsible for it in regard to its functioning. He had not issued any cheque. How he is responsible for dishonour of the cheque has not been stated. The allegations made in paragraph 3, thus in our opinion do not satisfy the requirements of Section 141 of the Act."

9. The well settled principle laid down by the Honourable Supreme Court, in a catena of decisions, cited supra, is squarely applicable to the facts of the case on hand, as in this case also there is only bald and vague allegations made against the Petitioner and such bald and vague allegations are not sufficient without making any specific averment as to how and in what manner the Petitioner was responsible for the conduct of the business of the Company, that too, when he has resigned from the Directorship as early as on 5.6.2004 i.e., three months prior to the issuance of the cheque on 23.08.2004, it cannot be said that he is vicariously liable.

10. In view of the said reasons and in the light of the principles laid down by the Honourable Supreme Court, the cognizance taken by the learned Judicial Magistrate No.1, Erode is not sustainable and hence, the criminal proceedings with regard to the Petitioner, on the file of the Judicial Magistrate

No.II, Pondicherry is liable to be quashed and accordingly, it is quashed and this Criminal Original Petitions are allowed. consequently, connected Miscellaneous Petitions are closed.

11. Since the cases are of the year 2011, the court below is directed to expedite the trial as regards other accused and dispose of the same, as expeditiously as possible.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.1,
   Erode.

2. The Judicial Magistrate, No.II,
   Pondicherry

Crl.O.P.Nos. 27610 & 27617 of 2011
and
Crl.M.P.Nos. 1, 1 & 2 of 2011

NMI(CO)
GMY(03/02/2020)