IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.1354 OF 2016
AND
CRL.M.P.NOS.620 & 621 OF 2016

Nimal Nithyanandam
S/o.Nithyanandam ... Petitioner

Vs.

M/s.Krishna Corporation
rep.by Authorised Agent
K.Karthick Ragunath,
S/o.L.R.Kalyanasundaram,
148, Kovai Thiru Nagar,
Nehru Nagar, Aerodrum Post,
Coimbatore - 641 014. ... Respondent

Prayer:

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the complaint in S.T.C.No.334 of 2015 pending on the file of the Judicial Magistrate No.3, Coimbatore and quash the same.

For Petitioner : Mr.V.Nicholas

For Respondent : Mr.Nanda Kumar
Legal Aid Counsel

O R D E R

The petitioner, who is arrayed as A4 in S.T.C.No.334 of 2015 on the file of the learned Judicial Magistrate III, Coimbatore, has filed this quash petition.

2. The respondent had filed a private complaint for offence under Section 138 of Negotiable Instruments Act, 1881, against four persons, 1st accused being the company and accused 2 to 4 are its Directors.

3. The gist of the case is that the complainant is a partnership firm engaged in trading of Cotton waste. Accused No.1 is a textile mill engaged in manufacturing of textile goods. Accused Nos.2, 3 and 4 are directors of Accused No.1 and they are conducting day-to-day business operations of Accused No.1. Accused No.1 purchased various quantities of cotton wastes from complainant during the year 2012 and 2013 and the complainant raised invoices for the same. Accused No.1 were making payments to the complainant at regular intervals mostly on bill to bill basis. But all of a sudden, in the year 2013 Accused No.1 stopped the purchase of cotton waste from the complainant and further stopped making payments. As per the bills, the amount due to the complainant is Rs.4,87,883/-. After several requests made, accused 2 to 4 issued three cheques towards part payment and assured to make remaining payment after realization of these cheques. The cheques were signed by the 2nd accused with the knowledge of the Accused 3 and 4. The details of the cheques are given as follows:-

CHEQUE NO	AMOUNT	BANK	CHEQUE DATE	PRESENT-ED ON	RETURN-ED ON	REASON
822912	Rs.1,50,000/-	Canara Bank, Kodumudi Branch	08/07/2015	09/07/2015	10/07/2015	Account closed
822913	Rs.1,50,000/-	Canara Bank, Kodumudi Branch	08/07/2015	09/07/2015	10/07/2015	Account closed

4. The cheque when presented for payment with the complainant bank, namely, ICICI Bank, Trichy Road Branch, the same was returned for the reason "Account Closed", which was intimated to the complainant on 10.07.2015. Thereafter, a legal notice was issued on 28.07.2015 which was delivered to the accused on 30.07.2015. The accused had sent a reply with false and frivolous allegations. Hence, ignoring the same, the complainant filed the above complaint.

5. The contention of the petitioner is that the respondent/ complainant had filed the above case for offence under Sections 138 and 142 of the Negotiable Instruments Act, 1881. There was some business understanding between the 1st accused company and the respondent. The entire business of the 1st accused company was carried out by the 2nd accused, who was the Managing Director, the 3rd accused is the wife of the 2nd accused and the 4th accused/the petitioner herein, who is the son of the 2nd

accused. The petitioner was made as a Director in the 1st accused company, since he happened to be the son of the 2nd accused Managing Director, the 2nd accused and 3rd accused were his parents. Other than this, the petitioner had no role in the business for day-to-day affairs of the 1st accused company.

6. He further submitted that the petitioner was engaged in other businesses and hence, due to pre-occupation with his other activities, he had sent a letter dated 25.03.2015 resigning the post of Director of the 1st accused company. The 1st accused company held a Board meeting on 07.04.2015 and accepted the resignation of the petitioner. Thereafter, the resignation was intimated to the Registrar of companies on 04.05.2015. From 04.05.2015, the petitioner has nothing to do with the 1st accused company. Admittedly, in this case, the cheque is issued after the petitioner had resigned as Director from the 1st accused company. Hence, the petitioner is not liable to be prosecuted. Further, except for the bald allegation that the petitioner is the Director of the 1st accused company, there is no specific overt act against the petitioner. Merely, being a Director of the company is not sufficient to make a person liable under Section 141 of the Act and he placed reliance on the S.M.S.Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another reported in 2007 SCC Crl (2) 192.

7. Notice was sent to the respondent and the same was received by the respondent. Affidavit of service filed, name of the respondent printed in the cause list. No appearance either in person or through any counsel, this case is kept pending for all these years without any progress. Hence, this Court had appointed Mr.Nandakumar as Legal Aid counsel.

8. The learned counsel for the respondent submitted that the business transaction between the petitioner company and the respondent was during the year 2012 - 2013. Admittedly, during the relevant period the petitioner was its Director. The petitioner had not denied the liability of the 1st accused company. The petitioner, knowing well that the petitioner company is liable to make payment to the respondent, had issued the cheque dated 08.07.2015 and with a illegal motive had resigned from the company on 07.04.2015. The other Directors are none other than his parents who had connived with this petitioner. Further the petitioner's resignation has become a questionable one and the cheque issued for liability is not disputed, it was issued, when the petitioner was the Director of the 1st accused company. The contention of the petitioner cannot be accepted and the points raised by the petitioner are to be decided only during trial. The respondent had followed all the mandatory provisions and filed the complaint.

9. The basic averment that the petitioner was a Director and in charge and responsible for the conduct of the 1st accused company at the relevant time has been made, which is sufficient. Learned counsel placed reliance in the judgment of Gunmala Sales Private Limited Vs. Navkar Infra Projects Ltd., reported in 2015 (1) SCC 103.

10. This Court, on considering the rival submissions and on perusal of the materials, it is found that the petitioner was a Director of the 1st accused company till 07.04.2015. The business transaction between the 1st accused company and the respondent/complainant was during the year 2012 - 2013. The cheque had been issued for the liability for the said business. During the relevant point of time, the petitioner was a Director. The other two Directors are none other than his parents. The petitioner had resigned three months prior to the date of the cheque. Further, the petitioner's resignation being registered with the ROC has not been conclusively proved. In view of the same, the petitioner's contention that he was not the Director of the company during the relevant period cannot be accepted.

11. From the complaint, it is seen that the cheque has been issued by the 1st accused company and the cheque has been signed by A2 as a Director and Authorised Signatory. Admittedly, the petitioner had not signed the cheque and from the complaint, it is seen that except for a bald averment, there is no specific averment to show that at the time of the offence committed, the petitioner was in charge and responsible for the conduct of the business of the company. This averment is an essential requirement to attract Section 141 of the Negotiable Instruments Act. Without this averment made in the complaint the requirement of Section 141 cannot be said to be satisfied.

12. From the complaint, it is seen that there is no such averment to rope in the petitioner. The Director would not automatically become vigorously liable. Merely being the Director of the company could not make such person liabile under Section 141 of the Negotiable Instruments Act. This Court in the case of SMS pharmaceuticals and K.K.Ahuja, had given such dictum.

13. In view of the same, this Court is inclined to quash the proceedings as against the petitioner/A4 in S.T.C.No.334 of 2015. Further STC.No.324 of 2015 has been kept pending before the trial Court due to pendency of the above O.P. In view of the same, the trial Court is directed to complete the trial in the above case within a period of four months from the date of receipt of a copy of this order.

14. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

This Court place his appreciation to the legal aid counsel Mr.Nandha Kumar who made effective defence in this case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate III,
Coimbatore.

+1cc to Mr.V.Nicholas, Advocate, S.R.No.31385

Crl.O.P.No.1354 of 2016
and
Crl.M.P.Nos.620 & 621 of 2016

UM(CO)
CS/10/12/2020