

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.14488 OF 2015

AND

M.P.NO.1 OF 2015

1. N.Vijayaraghavan
S/o.M.Narayanasamy

2. Jayanthi Suresh
D/o.Venkatesan

3. D.Srinivasalu
S/o.Devarajalu,
New Version India Pvt.Ltd,
No.50, South West Boag Road,
T.Nagar, Chennai-600 017. Petitioners

Vs.

M/s.Cyberstar Infocom Pvt. Ltd.,
Head Office at "Surya Chambers",
1st Floor, South Block, #124, Airport Road,
Murugeshpalya, Bangalore - 560 017.
Rep.by its Authorised Signatory,
K.Ravikumar

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for records relating to the C.C.No.118 of 2015 pending on the file of the learned Fast Track Court - IV, George Town, Chennai and quash the same.

For Petitioners: Mr.S.Rajmakesh

For Respondent : Mr.Aswin Kumar
Legal Aid Counsel

O R D E R

The petitioners, who are arrayed as accused A.1 to A.3, has filed this petition seeking quash of the case in C.C.No.118 of 2015 on the file of Fast Track Court - IV, George Town, Chennai.

2. The gist of the case is that the respondent is a Private Limited Company, was having business relationship with the petitioners and had supplied I.T. products under invoice No.CHN-INV-121878, dated 16.03.2012, valued at Rs.13,14,338/-, Invoice No.CHN-INV-121904, dated 20.03.2012, valued at Rs.13,14,338/- and Invoice No.CHN-INV-121909, dated 21.03.2012, valued at Rs.32,60,250/-. The copies of Invoices are also produced. The petitioners have acknowledged the receipt of the goods and the petitioners have issued cheques bearing No.054470, dated 05.05.2012 for Rs.13,14,338/- and cheque bearing No.054469, dated 30.04.2012 for Rs.13,14,338/- and cheque bearing No.054471, dated 07.05.2012 for Rs.32,60,250/-. All the cheques were drawn on ING Vysya Bank Limited, G.N.Street Branch, Chennai. The respondent supplied I.T. Product Invoice No.CHN-INV-130042, dated 20.04.2012, valued at Rs.2,91,900/-, the copies of Invoice are produced. The petitioners have acknowledged the receipt of the goods and the petitioners have issued cheques bearing No.054502, dated 03.06.2012 for Rs.2,91,900/-, drawn on ING Vysya Bank Limited, G.N.Street Branch, Chennai. The petitioners are liable to pay a total amount of Rs.61,80,825/- under all the four invoices.

3. The cheques were presented for clearance on 15.05.2012 and 04.06.2012 through its banker HDFC, Chennai. The cheques were returned with an endorsement "Payment Stopped by the Drawer" on 17.05.2012 and 06.06.2012. Hence, two statutory notices were sent to the petitioners on 11.06.2012. The said notice was also personally served to A.1 to A.3. On receipt of notice, the petitioners neither made the payment nor sent any reply. Thereafter, following the statutory provisions, a complaint came to be filed. Initially, the complaint was filed before the XIV Additional Metropolitan Magistrate Court, Bangalore. Thereafter, it was presented before the Fast Track Court No.IV, George Town, Chennai and taken on file in C.C.No.118 of 2015.

4. The petitioners had taken notice to the respondent and it was served on the respondent on 25.08.2020. Thereafter, the name of the respondent was printed in the cause list and there is no representation on behalf of the respondent. This Court, considering the fact that a Criminal Original Petition is pending from the year 2015 without any progress, had appointed Mr.Aswin Kumar as legal aid counsel in this case.

5. The contention of the learned counsel for the petitioners is that admittedly the cheques involved in this case have been issued by the company viz., New Version India Private Limited and they have been signed by the Authorised Signatory, which is not disputed. Further, it is stated that the petitioner does not owe any liability to the respondent company. On perusal of the

complaint, there is nothing to show that the petitioners herein are drawer of the cheques. In the complaint, there is nothing to show that the petitioners were the Directors of the New Version India Private Limited and they were in charge and responsible for the day-to-day affairs of the company and signatory of the cheques. All these vital particulars are not found in the complaint. It is admitted that the cheques were issued by the New Version India Private Limited and it is also seen from the complaint that the company has not been arrayed as an accused. Without arraying the company as accused, the Director thereof cannot be made liable and arrayed as accused. Admittedly, in this case, the company has not been arrayed as accused and it had not been shown that the petitioners herein were in charge and responsible for the day-to-day affairs of the company and there is no specific averment against them. In support of his submissions, learned counsel placed reliance on the judgments of the Apex Court in *Aneetha Hada and others Vs. Godgather Travels and Tours Pvt. Ltd.*, and others reported in 2012 (5) SCC 661 and *SMS Pharmaceuticals Ltd., Vs. Neeta Bhalla and Another* reported in MANU/SC/0622/2005.

6. Learned counsel for the respondent submitted that on a perusal of the complaint, it could be seen that the company viz., New Version India Private Limited had not been arrayed as an accused, except in the cause title, there is no mention about the petitioners 1 to 4 as Directors of New Version India Private Limited. It has not been averred in the complaint that the petitioners were the Directors of the company and they were in charge and responsible to the day-to-day affairs of the company and this averment is an essential requirement to proceed against the petitioners under Section 141 of the Negotiable Instruments Act. Merely stating that the petitioners, being Directors of the company, are responsible for issuance of cheques, which is not sufficient to proceed against them. The Directors of a company cannot be deemed to be in charge and responsible to the company for its conduct of business. Admittedly, in this case the company has not been arrayed as an accused. He further submitted that the total cheque amount in this case is around Rs.61 lakhs. There is nothing to show that the liability of the accused has been discharged. Hence, liberty may be given to the company to proceed against the petitioners under Section 14 of the Limitation Act and in similar circumstances, the Apex Court has rendered a judgment in the case of *Charanjit Pal Jindal Vs. L.N.Metalics* reported in 2015 (15) SCC 768.

7. Considering the rival submissions and on a perusal of the typed set produced by the learned counsel for the petitioner, it is seen that the cheques bearing No.054470 dated 05.05.2012 for Rs.13,14,338/- and cheque bearing No.054469, dated 13.05.2012 for Rs.13,14,338/- cheque bearing No.054471 dated 07.05.2012 for Rs.32,60,250/-

were drawn on ING Vysya Bank Limited, G.N.Street Branch, Chennai. On a perusal of the cheques, it is seen that the drawer of the cheque is New Vision India Private Limited and the drawee is M/s.Cyberstar Infocom Private Limited. While so, the drawer of the cheque viz., New Vision India Private Limited has not been arrayed as an accused. The Apex Court, in the case of Aneetha, had categorically held that without arraying the company as an accused, its Directors cannot be roped in and proceeded against with the aid of Section 141 of the Negotiable Instruments Act.

8. Taking note of the judgment of the Apex Court in the above referred case and finding that the drawer of the cheque viz., New Version India Private Limited has not been made as an accused, this Court is of the view that proceedings cannot be proceeded against the petitioners under Section 138 and 142 of the Negotiable Instruments Act. Considering the judgment of the Apex Court as also the fact that substantial amount is involved in this case and the complainant, on wrong premise, had proceeded against the petitioners, this Court gives liberty to the respondent to proceed against the petitioners, if they feel so and they can invoke Section 14 of the Limitation Act.

9. In the result, this Criminal Original Petition is allowed and the proceedings against the petitioners in C.C.No.118 of 2015 on the file of Fast Track Court - IV, George Town, Chennai, is hereby quashed. Consequently, connected miscellaneous petition is closed.

10. This Court places its appreciation to the legal aid counsel Mr.Aswin Kumar, who made effective defence in this case.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Judge,
The Fast Track Court - IV,
George Town, Chennai.

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and M.P.No.1 of 2015

PM(CO)
CS/14/12/2020