

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.14848 & 14849 of 2015
and
Crl.M.P.Nos.1 & 1 of 2015

J.Sumathi ... Petitioner in both Crl.O.Ps

Vs.

M/s.Choudhary Milling Industries,
Rep by its Proprietor,
Shri Roopnarayan Jagannathprasad Jain,
Through his Power of Attorney Holder,
Shri Sharad Roopnarayan Jain,
Occ Business, Office at 19, E I A S,
Mouza Chikli, Kalamna Road,
Nagpur. ... Respondent in both Crl.O.Ps

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for records vide C.C.No.3439 & 3440 of 2014 respectively pending on the file of the Fast Track Court-IV, Metropolitan Magistrate Court, George Town, Chennai and quash the same.

In both Crl.O.Ps
For Petitioner : Mr.P.Muthusamy

For Respondent : Mr.A.Ashwin Kumar,
Legal Aid Counsel

COMMON ORDER

The petitioner/A3, who is facing trial in C.C.Nos.3439 & 3440 of 2014, for offence under Section 138 of the Negotiable Instruments Act before the Fast Track Court-IV, Metropolitan Magistrate, George Town, Chennai, has filed these quash petitions.

2.Since the issues in both the cases are one and the same, this Court proceeds to dispose the cases by way of common order.

3.Despite service of notice to the respondent and his name being printed in the cause list, the respondent failed to appear before this Court. Hence, this Court by order dated 31.08.2020 appointed Mr.A.Ashwin Kumar as Legal Aid Counsel

for the respondent.

4.The gist of the case is that the respondent/complainant was dealing in the business of food grains in the name of M/s.Choudhary Milling Industries and A1 company was on the same business in the name of M/s.Varshini Traders. A2 is the Proprietor of A1 and A3 is the Signatory of A1. The accused were approached the respondent for purchase of goods and the same was sold to the accused by credit basis. Initially, in the year 2011, the accused purchased goods from the respondent, there was series of transactions. Hence, the respondent has maintained a ledger account that the said goods were sent to the accused on credit with a specific understanding that the payment of the said bills will be paid to the respondent within 30 days from the date of the said bill and if the bill is not paid within a time, the accused will be liable to pay interest at the rate of 24% on the outstanding amount.

5.As per the ledger account maintained by the respondent, the accused were due of Rs.14,27,914/- to the respondent. In order to discharge the liability, the accused have issued seven cheques bearing numbers 000111, 000112, 000113, 000114, 000115 and 000116 for a sum of Rs.2,00,000/- each and another cheque bearing number 000117 for a sum of Rs.1,37,920/-, all drawn on Karur Vysya Bank, Chennai on 01.09.2014 toward part payment as per the ledger account and further undertook to clear up the dues in a short time.

6.When the respondent presented the said cheques for collection in his bank M/s.Wardhaman Cooperative Bank, Nagpur for encashment, the cheques were returned with an endorsement 'Funds Insufficient' on 06.09.2014 and the same was intimated to the respondent on the same day.

7.Aggrieved over the same, the respondent issued legal notice on 25.09.2014 and the same was served to the accused on 01.10.2014. Thereafter, the accused neither replied nor repaid the cheque amount. Hence, the respondent lodged the private complaints against the accused under Section 138 of the Negotiable Instruments Act, 1988, against which the present quash petitions.

8.The learned counsel for the petitioner/A3 submitted that in this case A1 is M/s.Varshini Traders, A2 is the Proprietor of A1 and A3 is the wife of A3. To discharge the liability, the cheques were issued and the same were got dishonoured. The learned counsel further submitted that the petitioner/A3 was not issued any cheques and she is not an authorized signatory of A1 company. The sole Proprietor of A1 company is her husband/A2 and he was only signed the cheques and issued the same to the respondent.

submitted that as far as the Proprietorship concern is concerned, the sole Proprietor only can be a signatory of the cheque. In this case, the sole Proprietor is A2. Further, the sole Proprietorship concern is not a limited company to authorize a person to sign the cheque on behalf of the company. This being the fact, the respondent issued legal notice under Section 138 of the Negotiable Instruments Act on 25.09.2014 and the same was received on 01.10.2014, for which the petitioner sent a reply dated 29.10.2014.

10.It is further submitted that M/s.Varshini Traders/A1 being a sole Proprietorship concern, Section 141 of the Negotiable Instruments Act would not apply. In this case, M/s.Varshini Traders is a Proprietorship concern and A2/N.Jai Ganeshen is the Proprietor of M/s.Varishini Traders. Proprietary concern is not a firm. A firm is a partnership firm consisting of partners. In this case, A1/M/s.Varshini Traders is not a fir. It is only a proprietary concern. Only the drawer of the cheque can be prosecuted. As such the proceedings against the petitioner, who is said to be an authorized signatory is to be quashed.

11.In support of his contention, reliance was placed on the following judgments of this Court:-

- Anas Industries, Chennai-97 rep. by its Proprietor S.Ram Mohan Versus Sri Suresh Bafna, Prop., Mansi Mercantile Company rep. by its Power of Attorney holder Sri Kantilal S.Dave reported in 1999 (1) MWN (Cr.) 296.
- N.Vaidyanathan/Deepka Milk Marketing rep. by its Proprietrix Mrs.Revathi Vaidyanathan Versus Dodla Dairy Limited rep. by its Accounts Executive, R.Swaminathan reported in 2000 (1) MWN (Cr.) DCC 33 (Mad.).
- R.Dennis Raja Versus T.Subbiah reported in 2018 SCC OnLine Mad 2982.

12.The learned counsel for the respondent submitted that A1/M/s.Varshini Traders was due to the respondent for a sum of Rs.14,27,914/- and issued seven cheques dated 01.09.2014. The cheques were presented in the bank viz., Wardhaman Cooperative Bank, Nagpur on 09.06.2014, but it was returned on the same day with an endorsement 'FUNDS INSUFFICIENT'. Then the respondent issued statutory notice under Section 138 of the Negotiable Instruments Act on 25.09.2014 to the accused, but they failed to make payment. Therefore, the respondent preferred the complaint against the petitioner and others.

13.It is further submitted by the learned counsel for the respondent that towards the discharge of liability, A2 had given cheques in favour of the respondent within the knowledge of the petitioner. Thus, the petitioner and other accused have committed the offence punishable under Section 138

Negotiable Instruments Act, by dishonouring the aforesaid cheques and not making the payment of the same within the statutory period of 15 days after receipt of the legal notice. The other points raised by the learned counsel for the petitioner for quashing the proceedings, has to be decided during the trial.

14.This Court considered the rival submissions and perused the materials available on records.

15.In this case, A1 M/s.Varshini Traders is a Proprietorship concern, A2 N.Jai Ganeshen is the Proprietor of A1 and A3 is the wife of A2. A proprietary concern is not a firm. A firm is a partnership concern consisting of partners. In this case, the first accused is not a firm. It is only a proprietary concern. Only the drawer of the cheque can be prosecuted. In this case, the drawer of the cheques is A2.

16.Further, there is a basic and fundamental difference between a "firm" and a proprietary concern. The first accused is only a Proprietary concern, its proprietor being A2 N.Jai Ganeshen. A1 and A2 are one and the same person. The issuance of the cheque by A2 as Proprietor of A1 M/s.Varshini Traders would amount to issuance of the cheque by A2.

17.This Court in the case of "Anas Industries, Chennai-97 rep. by its Proprietor S.Ram Mohan Versus Sri Suresh Bafna, Prop., Mansi Mercantile Company rep. by its Power of Attorney holder Sri Kantilal S.Dave reported in 1999 (1) MWN (Cr.) 296" held as follows:-

"5.In M/s. Sri Sivasakthi Industries v. M/s. Arihant Metal Corporation, 1992 MLJ(Cr1) 102, Pratap Singh, J., had an opportunity to consider an identical question wherein the respondent therein filed a private complaint against one Roman as the first accused in his capacity as a representative of a firm and as the second accused in his personal capacity. Pratap Singh, J. has observed as under:

"Proprietary concern is not a firm. A firm is a partnership firm consisting of partners. In this case, the first accused is not a firm. It is only a proprietary concern --- only the drawer of the cheque can be prosecuted. As such the proceedings against the first accused represented by its proprietor are to be quashed."

What has been observed by the noble Judge squarely applies to the facts of the instant case. At last in that case, one Roman was shown as Accused Nos. 1 and 2, i.e., as the representative of M/s. Sri

Sivasakthi Industries, Madras, a Proprietorship concern and again in his personal capacity.

6.In the instant case, Anas Industries is the accused, and it is being represented by Ram Mohan. When Anas Industries is not a juridical person, it cannot be said that Ram Mohan can represent a non-juridical entity.

7.In the instant case, Anas Industries is the accused. Failure to make payment within specified time after the receipt of statutory notice becomes an offence, because such failure is an illegal act with requisite mens rea. Here, it cannot be said that Anas Industries can be attributed with any mens rea, when it is not a juridical person."

18.The complaint of the respondent is not maintainable against A3. On the ground that A1 and A2 are same persons and that A1 is not a "firm" as per Section 141 of the Negotiable Instruments Act.

19.In view of the above, these Criminal Original Petitions are allowed. The further proceedings in C.C.Nos.3439 & 3440 of 2014 on the file of the Fast Track Court No.IV, Metropolitan Magistrate Court, George Town, Chennai stand quashed as against the petitioner/A3 alone. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The IV Judge,
Fast Track Court No.IV,
Metropolitan Magistrate Court,
George Town, Chennai.

Cr1.O.P.Nos.14848 & 14849 of 2015

BR(CO)
GN(22/10/2020)