IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.OP.No.5255 of 2011
and
M.P.No.1 of 2011

G.Swaminathan ... Petitioner / Accused No.4

Vs

Mr. S.V.Selestine ... Respondent/ Complainant

Prayer:- This Criminal Original Petition is filed to call for the records in CC.NO.347/2005 on the file of the Judicial Magistrate No.II, Pondicherry and to quash the same in respect of the Petitioner /Accused.

For Petitioner : Mr.R.Saravanakumar

For Respondent : Mr.C.A.Diwakar

ORDER

The Petitioner, who is arrayed as A4, is facing trial for the alleged offence under Section 138 of the Negotiable Instruments Act and he has come forward with this petition to quash the proceedings in CC.NO.347/2005 on the file of the Judicial Magistrate II, Pondicherry.

2. According to the complainant, the Petitioner is the Director of M/s.PNL Nihdi Limited (herein after referred to as the Company) and a cheques bearing No.127575 dated 07.01.2005, for a sum of Rs.1,96,228/- and bearing No.127576 dated 30.01.2005, for a sum of Rs.2,83,121/- respectively drawn on City Union Bank of India, Pondicherry in favour of the complainant were issued and the same were dishonoured, when it were presented for encashment.

3. According to the Petitioner, A1 is the Chairman, A2 is the Vice Chairman, A3 to A4 are the Directors and A7 is the Secretary and A8 is the Manager of the M/s.PNL Nihdi Limited and A9 is the said Company.

4. The complainant had invested money into the said Company by way of deposits and when he approached them for withdrawal of the deposits, A9/Company is said to have issued a cheque referred to above in favour of the complainant towards the discharge of their liability for the deposit made by him. When the complainant deposited the said cheque in his account for payment of the amount, the same was returned to the complainant on 07.02.2005 with an endorsement 'funds insufficient and Account Freezed by Court Order'.

5. According to the complainant, A1 to A4 are liable to pay the cheque amounts. Since the accused failed to honour the said cheque in favour of the complainant, the complainant had issued a Statutory leagal notice dated 14.02.2005 to the accused by Registered post. Notice sent to A1 to A4 was returned with the endorsements "refused" and the registered post sent to A4 to A9 were returned to the sender with the endorsements "Door Locked, "Door intimation given", "Addressee gone to long tour, "Left without instruction" and "office not functioning" respectively. According to the complainant, the accused were evading to receive the notice and they had the knowledge of the contents of the notice issued on behalf of the complainant. Since the accused failed to pay the amount, the complaint under Section 138 and 142 of Negotiable Instruments Act has been filed.

6. Mr.R.Saravanakumar, the learned counsel for the Petitioner has contended that even as per the admitted allegation contained in the complaint, the disputed cheques were signed and issued only by A9 on behalf of the Company. It is contended by the learned counsel that as far as the Petitioner herein is concerned, he has nothing to do with the day to day affairs of the Company, as he has resigned from the Directorship as early as on 5.6.2004, which is evident from the certified copy of Form-32 filed with the Registrar of Companies.

7. The learned counsel for the Petitioner further pointed out that the disputed cheque in this case was issued on 04.11.2004 and during the relevant period, the Petitioner herein was nowhere in the picture and he has nothing to do with the day to day affairs of the Company and was not responsible or in charge of the business of the Company at the relevant point of time and as such, the Petitioner cannot be held vicariously liable for the offence committed by the Company and other accused.

8. It is further contended by the learned counsel for the Petitioner that there is no averment in the complaint, except stating that the Petitioner is the Director to implicate him in the commission of the offence. He would point out that there is no allegation that the Petitioner was the Managing Director or

he was responsible for the conduct of the business of the Company nor with his connivance the cheque was issued. He would contend that in the absence of any such averment in the complaint, the cognizance taken by the learned Magistrate is illegal.

9. It is reported that the deposit was made by the complainant long back and hence, the resignation tendered by the Petitioner will not in any way affect the cause of action and he would be vicariously liable since the deposits were made while he was functioning as the Director in the said Company. He would further contend that the point of resignation of his Directorship is to be agitated only at the time of full fledged trial and such a point cannot be raised at this stage and as such, the criminal proceedings is not liable to be quashed.

10. It is seen that the Petitioner has been arrayed as A4 and he is facing the trial for the offence under Section 138 of the Negotiable Instruments Act. A perusal of the complaint discloses that it is merely stated that the Petitioner/A4 is one of the Directors and no specific allegation is made against him that he was in charge of the day today affairs of the Company at the relevant point of time.

11. It has been held by the Honourable Supreme Court 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], relying on another decision of the Honourable Supreme Court rendered in the case of Satish Mehra V. Delhi Administration and another (1996-93-Crimes-85-SC) 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.

12. 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 in charge 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 earlier decision rendered in the case of SMS Pharmaceutical Limited Vs. Neeta Bhalla and another [2006-1-LW-Crl-1=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."

13. 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."

14. The Honourable Supreme Court has also held in another decision rendered in the case of Saroj Kumar Poddar Vs. State (NCT of Delhi)(2007-1-CTC-529) 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."

15. 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 a bald and vague allegations made against the Petitioner and such bald and vague allegations itself is not sufficient without making any specific averment as to 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. eight months prior to the issuance of the cheques dated 07.01.2005 & 30.01.2005 respectively, it cannot be said that he is vicariously liable.

16. 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 is not sustainable and hence, the criminal proceedings in so far as the Petitioner/A4 is concerned on the file of the Judicial Magistrate No.II, Pondicherry is liable to be quashed and accordingly, it is quashed and this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed. Since the case is of the year 2005, 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(CJ Conf)

//True copy//

Sub Assistant Registrar

jrs

To:

1.The Judicial Magistrate No.II, Pondicherry

2.-do-The Chief Judicial Magistrate, Pondicherry.

+1cc to Mr.E.Veda Bagath Singh, Advocate SR.No.777

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and
M.P.No.1 of 2011

EV(CO)
GMY(28/02/2020)