

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Cr1.O.P.No.23455 of 2013

and

M.P.Nos.1 of 2013

N.A.Velappa Gounder

... Petitioner/A-6

Vs.

P.Boopathi Raja

... Respondent/Complainant

PRAYER: Petition filed under Section 482 of Cr.P.C., seeking to call for the records in CC.No.248 of 2013 on the file of the Judicial Magistrate, Dharapuram in so far as the petitioner/ 6th accused in consent and quash the same.

For Petitioner : Mr.A.K.Kumaraswamy

For Respondent : No appearance

O R D E R

This Criminal Original Petition has been filed seeking to call for the records in CC.No.248 of 2013 on the file of the Judicial Magistrate, Dharapuram in so far as the petitioner/ 6th accused in concerned and quash the same.

2. The learned counsel appearing for the petitioner would submit that the petitioner is arrayed as A6. The complainant/ respondent had filed a complaint under Section 138 of Negotiable Instruments Act alleging that the accused 2 to 6 were partners of the company M/s.Sri Meenatchi Exports. The company is arrayed as first accused. The third accused is said to have borrowed a sum of Rs.2 Lakhs to meet out the urgent expenses of the first accused company on 01.12.2012. To discharge the said loan, the third accused on behalf of the first accused issued a cheque for the said sum and the said cheque was presented for collection. It was returned default for the reason "funds insufficient".

3. The learned counsel for the petitioner would submit that insofar as A6 is concerned he has no role in the day to day affairs of the first accused company. Admittedly, the third accused was the Managing Partner of the first accused company and issued cheque for the said sum. He would also submit that there is no specific allegation as against the petitioner. In so far as the accused Nos.2, 4 and 5 are concerned for the very same issue a petition has been filed for quashing the C.C in CrI.O.P.No.1068 of 2014 and the same was allowed by this court on 20.02.2019.

4. It is useful to refer following decision which were rendered in similar line. 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-CrI-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."

5. 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."

6. 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.Munjhal 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."

7. 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 how and in what manner the Petitioner was responsible for the conduct of the business of the Company.

8. 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, Dharapuram is not sustainable and hence, the criminal proceedings in so far as the Petitioner/A6 is concerned on the file of the Judicial Magistrate, Dharapuram is liable to be quashed and accordingly, it is quashed and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions is closed.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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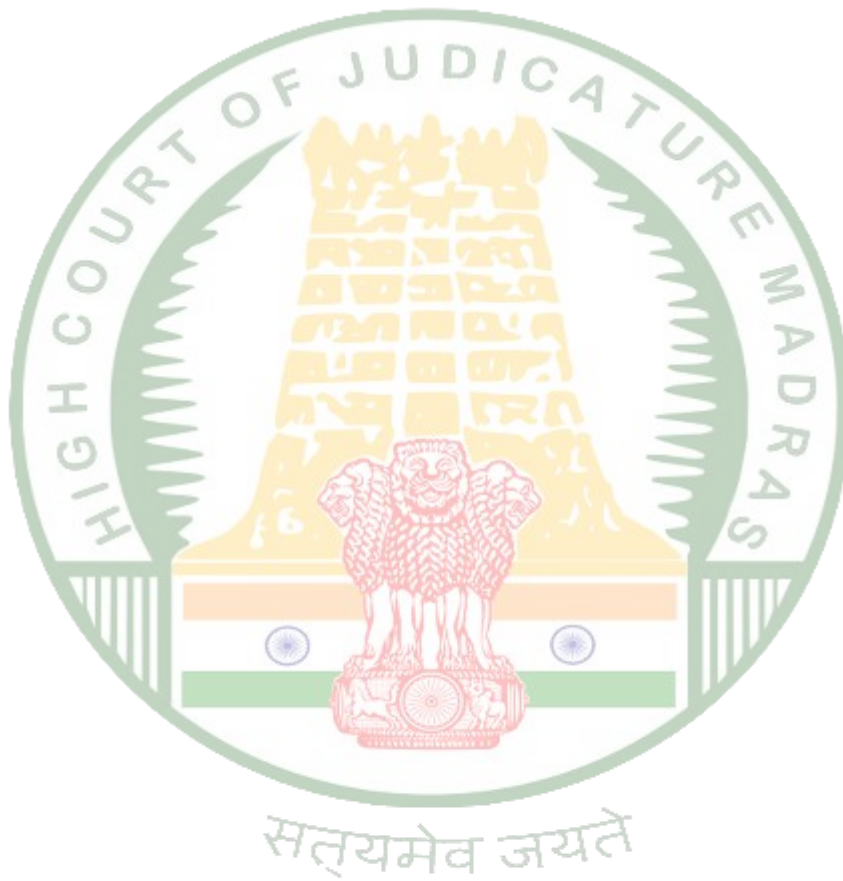
1.The Judicial Magistrate,
Dharapuram.

2.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.2513

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NMI (CO)
CB(20/03/2020)



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