IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.01.2020
CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.Nos.25859 & 27742 of 2013
and Crl.M.P.Nos.1 & 1 of 2013

1.Nitin Dugar ... Petitioner in Crl.O.P.No.25859 of 2013/ 3rd Accused

2.M/s.Skat India Cloth Apparels Pvt. Ltd.,
Rep by. The Managing Director,
Mr.Kollur Varadharajulu Naidu,
No.536, (New No.1057) Poonamallee High Road,
Arumbakkam,
Chennai - 600 106.

3.Kollur Varadharajulu Naidu,
The Managing Director,
M/s.Skat India Cloth Apparels Pvt. Ltd.,
18/22 Jagannatha Nagar, 1st Main Road,
Arumbakkam, Chennai - 600 106.

4.N.Padma, Director,
M/s.Skat India Cloth Apparels Pvt. Ltd.,
No.536, (new No.1057) Poonamallee High Road,
Arumbakkam, Chennai - 600 106. ... Petitioners in Crl.O.P.No.27742 of 2013/ Accused Nos.1,2 & 4

Vs.

1.M/s.Dinesh Exports,
Represented by
P.Subramani Son of Palaigounder (Partner),
S.F.No.446/6A, 7A, Annangur Post,
Tiruchengode Taluk,
Namakkal District ... Respondent in Crl.O.P.No.25589 of 2013/ Complainant

2.M/s.Dinesh Exports,
Rep. by its Partner,
P.Subramani,
S/o.Palani Gounder,
S.F.No.446/6A, 7A,
Annanugur Post,
Thiruchengode Taluk. ... Respondent in Crl.O.P.No.27742 of 2013/ Complainant

PRAYER in Crl.O.P.No.25859 of 2013: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records and quash the case against the petitioner in S.T.C.No.243 of 2013 in the Court of the learned Judicial Magistrate Fast Track, Tiruchengode.

PRAYER in Crl.O.P.No.27742 of 2013: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pending on the file of the learned Judicial Magistrate, Fast Track Court (Magistrate Level), Tiruchengode, Namakkal District in S.T.C.No.243 of 2013 and quash the Criminal Proceeding.

For Petitioner : M/s.R.John Sathyan in Crl.O.P.No.25859 of 2013
: M/s.N.Kirubanandam in Crl.O.P.No.27742 of 2013

For Respondent : M/s.M.Guruprasad in both Crl.O.Ps

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ORDER

Criminal Original Petitions have been filed to quash the proceedings against the petitioners in S.T.C.No.243 of 2013 pending on the file of the Judicial Magistrate, Fast Track Court (Magistrate Level), Tiruchengode.

2.Since the petitioners/accused and respondents/complainants are common and the issue involved are similar and hence, I proposed to dispose of all the three Criminal Original Petitions by a common order.

3.For the sake of convenience, the petitioner hereinafter referred as “Accused” and the respondents hereinafter referred as “Complainant” as found in the complaint.

4.The case of the complainant is that the complainant is a manufacturer of export quality fabric and doing textiles business in the name of M/s.Dinesh Exports, a partnership firm. The 1st accused is a private limited company incorporated under the Company Law Board doing fabric export business and the 2nd, 3rd and 4th accused are the Managing Director, Additional Director and Director/Authorized signatory of the company under whose control, the day to day affairs of the company is carried out. In course of business, the 2nd, 3rd and 4th accused on behalf of the 1st accused used to purchase finished export quality fabric from the respondent on credit basis and after the due delivery of the fabrics the books of accounts maintained by the respondent as on 03.01.2012 shows that the accused have to pay a sum of Rs.13,69,662/-. In discharge of a part liability, the accused issued two posted cheques as follows:-

Sl.No.	CHEQUE ISSUED ON	CHEQUE DATE	CHEQUE NO.	CHEQUE AMOUNT
1.	09.10.2012	25.12.2012	202497	Rs.5,00,000/-
2.	09.10.2012	15.01.2013	202499	Rs.5,00,000/-

5.When the complainant presented the above said two cheques for collection before the Tamil Nadu Mercantile Bank Limited, Tiruchengode Branch on 20.02.2013, the two cheques were dishonoured with an endorsement "funds insufficient". After knowledge of the dishonour of the two cheques, the respondent/complainant issued a legal notice dated 22.03.2013. On receipt of the legal notice, the 2nd accused on behalf of the 1st accused sent a reply dated 08.04.2013 to the respondent by ignoring the transaction between them. Hence, the complainant filed a private complaint before the trial Court.

6.Mr.R.John Sathyan, learned counsel appearing for the petitioner/A3 would submit that the 2nd accused is the signatory of the 1st accused company and the 3rd accused has not in the day to day affairs of the company and not even signed in the cheques. He would further submit that the Director of a Company shall not automatically be vicariously liable for commission of an offence on behalf of the Company. What is necessary is that sufficient averments should be made to show that the person who is sought to be proceeded against on the premise of his being vicariously liable for commission of an offence by the Company must be incharge and shall also be responsible to the Company for the conduct of its business.

7.In order to substantiate his arguments, the learned counsel for the petitioner/A3 relied upon the decision of the Hon'ble Supreme Court in the case of S.M.S.Pharmaceuticals Limited Versus Neeta Bhalla and another reported in (2007) 4 SCC 70.

8.Mr.S.N.Kirubanandam, learned counsel appearing for the petitioners/A1, A2 & A4 in Crl.O.P.No.27742 of 2013 would submit that except the 2^{nd} accused all the other accused are neither signatories nor holding any post in the company and hence, no liability can be foisted against them. He would further submit that the trial Court has erred in taking the case on file as against the petitioners in the absence of averments in the complaint that these petitioners were incharge and responsible for the conduct of the business of the company at the time of commission of offence.

9.Per contra, M/s.Guru Prasad, learned counsel for the respondent would submit that there are sufficient materials to prove the guilt of the accused persons. He would further submit that in discharge of the liability, the petitioners had issued two cheques (cited supra). Once a cheques has been signed and issued in favour of the holder, there is statutory presumption that it is issued in discharge of a legally enforceable debt or liability. The other points raised by the learned counsel for the petitioners have to decide only during the trial. Further other than the denial, there are no other materials produced by the learned counsel for the petitioners and prayed for dismissal of the quash petitioners.

10.Considering the rival submissions and on perusal of the materials, it is seen that though there are some allegations against the accused persons, the 2^{nd} respondent has issued two cheques on behalf of the 1^{st} accused company in favour of the respondent. However, the 3^{rd} and 4^{th} accused were no way connected with the affairs of the 1^{st} accused company and they were added as an accused only on the ground of the Directors of the company and they have not to be held vicariously for offence committed by the company.

11.At this juncture, it will be relevant to place reliance on the Judgment relied upon by the learned counsel for the petitioner/3^{rd} accused.

12.In the Judgement in S.M.S.Pharmaceuticals Limited Versus Neeta Bhalla and another reported in (2007) 4 SCC 70, referred supra, the Hon'ble Supreme Court has held as follows:-

> "The liability of a Director must be determined on the date on which the offence is committed. Only because Respondent No. 1 herein was a party to a purported resolution dated 15.02.1995 by itself does not lead to an inference that she was actively associated with the management of the affairs of the Company. This Court in this case has categorically held that there may be a large number of Directors but some of them may not associate themselves in the management of the day to day affairs of the Company and, thus, are not responsible for conduct of the business of the Company. The averments must state that the person who is vicariously liable for commission of the offence of the Company both was incharge of and was responsible for the conduct of the business of the Company. Requirements laid down therein must be read conjointly and not disjunctively. When a legal fiction is raised, the ingredients therefor must be satisfied.
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> If the complaint petition is read in its entirety, the same would show that the only person who was actively associated in the matter of obtaining loan, signing cheques and other affairs of the company which would lead to commission of the alleged offence was the accused No. 2. By reason of the purported resolution dated 15.02.1995, whereupon strong reliance has been placed by Mr. Mishra, only the accused No. 2 was authorized to do certain acts on behalf of the Company. The cheques were issued on 15.08.1996, i.e., after a period of 17 months from the date of the said resolution. As is evident from the averments made in the complaint petition, the cheques represented the amount of interest payable for a total period of 15 day."

13.It is clear from the above Judgment that the only person who was actively associated in the matter of obtaining loan, signing cheques and other affairs of the company which would lead to commission of the alleged offence and the Director of a Company shall not automatically be vicariously liable for commission of an offence on behalf of the Company and therefore, the 3rd and 4th accused must be extended the same benefit.

14.In the result, the proceedings in C.C.No.243 of 2013 on the file of the Judicial Magistrate, Fast Track Court (Magistrate Level), Tiruchengode is hereby quashed as against the 3rd and 4th accused alone. Accordingly, Crl.O.P.No.25859 of 2013 is Allowed and Crl.O.P.No.27742 of 2013 is partly-allowed.

15.The Court below is directed to proceed further with the trial as against the 1st and 2nd accused and complete the proceedings as expeditiously as possible. The appearance of the 1st and 2nd accused before the Trial Court is dispensed with. However, this order will not stand on the way of the Trial Court to insist for the appearance of the 1st and 2nd accused for receiving copies under Section 207 of Cr.P.C., framing of charges, questioning under Section 313 of Cr.P.C. and judgment and as and when the Trial Court feels it necessary. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CJ conf)

/true copy/
Sub Asst. Registrar

vv2

To

The Judicial Magistrate, Fast Track Court
(Magistrate Level),
Tiruchengode.

+2 ccs to Mr.M.Guruprasad Advocate sr5433,5434
+1 cc to Mr.R.John Sathyan Advocate sr5497

CRL.O.P.Nos.25859 & 27742 of 2013

aa27/02/2020