IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.9852 & 9853 of 2015 and
Crl.M.P.Nos.1 & 1 of 2015

Hema Balaji,
W/o.N.Balaji,
Director,
M/s.Seven Hills Fashions Private Limited,
No.8/3689-B, Anna Nagar North,
Koothampalayam Pirivu,
Pooluvapatti Post,
Tirupur-641 602. ...Petitioner in both Crl.O.Ps

Vs.

M/s.Sree Suganya Knit Compacters,
Partnership Firm,
Rep. by its Manager and Power of Attorney Holder,
Mr.V.Ramaeshkumar, aged about 34 years,
S/o.R.Vishwanathan,
Mallian Thottam,
Sugnaya Dyeing Compound,
Veerapandi Post,
Kuppandampalayam,
Tirupur-5,
Tirupur District. ...Respondent in Crl.OP.9852/2015

M/s.Sree Suganya Textile Process,
Partnership Firm,
representation by its manager
and power of Attorney Holder,
Mr.V.Rameshkumar, ...Respondent in Crl.OP.9853/2015

COMMON PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to S.T.C.Nos.690 & 688 of 2014 on the file of the Judicial Magistrate No.II, Tirupur and quash the same.

In both cases:
For Petitioner : Mr.M.Vignesh for
Mr.C.S.Saravanan
For Respondent : Mr.A.Ashwin Kumar,
Legal Aid Counsel

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COMMON ORDER

Criminal Original Petitions have been filed to quash the proceedings in S.T.C.Nos.690 & 688 of 2014 pending on the file of the Judicial Magistrate Court No.II, Tirupur, for offence under Sections 138 r/w 142 of the Negotiable Instruments Act, 1881.

2.The gist of the case is that the respondent is a Partnership firm engaged in the business of processing, for textiles in the name of M/s.Sree Suganya Knit Compacters and A1 company viz., M/s.Seven Hills Fashions Private Limited is a private limited concern and engaged in the business of manufacturing of ready made garments. A2 and the petitioner/A3 are the Managing Director and Director of A1 company. The petitioner/A3 is wife of A2. The accused have dealt with the respondent in the business of processing garments on credit basis. Due to the transactions, a sum of Rs.93,204/- and Rs.8,21,690/- had become due and payable by the accused.

3.In discharge of the said legally enforceable liability in part, A2 issued one cheque bearing number 953489, dated 07.09.2012, for a sum of Rs.91,338/- and issued two cheques bearing numbers 201607 and 953490 for Rs.1,00,000/- and Rs.3,96,255/- respectively. When the complainant presented the cheques for collection in his bank viz., Bank of India, Ganapathipalayam Branch, the same were returned on 10.09.2012 for 'INSUFFICIENT FUNDS'. On 27.09.2012, the complainant issued legal notice to the accused to pay the cheque amount. On receipt of the same, the accused gave a reply notice on 14.10.2012 with false allegations and also requested the complainant to send the photostat copies of the cheque. The complainant sent the copy of the cheques to the petitioner on 17.10.2012, but the accused failed to pay the cheques amount. Hence, the complainant filed complaints, against which the present quash petitions.

4.The learned counsel for the petitioner submitted that the petitioner is the 3rd accused and she is not, incharge of the management and affairs of A1 company. The learned counsel further submitted that the petitioner was not a Director of the A1 company on the date of cheque i.e., on 07.09.2012, since he was resigned from the company on 10.10.2011. In support of the same, the petitioner produced Form 32. The Hon'ble Apex Court in the case of "S.M.S Pharmaceuticals Limited Versus Neeta Bhalla and another reported in (2005) 8 SCC 89" had given guidelines in invoking Section 141 of the Negotiable Instruments Act.

5.Following the case of "S.M.S Pharmaceuticals Limited" (cited supra), the Hon'ble Apex Court had reiterated the principals in "National Small Industries Corporation Limited reported in (2010) 3 SCC 330" and held that "essential averment to be made in the complaint and it is necessary to aver that at the time the offence was committed the present accused was incharge of, and responsible for the conduct of business of the company.". Further, the provision under Section 141 of the Negotiable Instruments Act is an exception to normal rule that no one is to be held criminally liable for an act of another. Further, in the case of dishonour of cheque and offence made by company, vicarious liability on the part of the accused, must be pleaded and proved and not inferred. These are the guidelines and vital facts to be found in the complaint.

6.The Hon'ble Apex Court had categorically held that the repetition of golden words will not suffice in the absence of specific averments. Further, Form 32 is a public document, which is of impeachable, sterile quality and the same can be considered by this Court, as held in the case of "State of Orissa Versus Debendra Nath Padhi reported in (2005) 1 SCC 568".

7.Therefore, the learned counsel for the petitioner prayed to quash the proceedings against the petitioner.

8.The learned counsel for the respondent submitted that in this case, the cheques are dated 07.09.2012, the petitioner/A3 resigned from A1 company on 10.10.2011. The cheque was presented on 10.09.2012 and the same were returned on the same day. Coming to know about the return of the cheque, the petitioner hurriedly resigned from A1 company and pre-dated her resignation and filed Form 32 to escape from the prosecution.

9.The petitioner is one of the Director along with A2. Hence, she cannot now claim that she was was not incharge of the affairs of A1 company. The points agitated by the petitioner are to be decided only during the trial. The petitioner being the Director of the company cannot absolve from the case. Hence, the petition for quashing of the proceedings, is liable to be dismissed.

10.This Court considered the rival submissions and perused the materials available on record.

11.It is not in dispute that the petitioner/A3 was a Director of A1 company and in the complaint lodged by the respondent except mentioning the magical word that the accused are incharge of the management and affairs of the company, there is nothing more. The Hon'ble Apex Court laid the guidelines in "S.M.S Pharmaceuticals", which is extracted below:-

"17.K.P.G. Nair v. Jindal Menthol India Ltd. [(2001) 10 SCC 218 : 2002 SCC (Cri) 1038] was a case under the Negotiable Instruments Act. It was found that the allegations in the complaint did not in express words or with reference to the allegations contained therein make out a case that at the time of commission of the offence, the appellant was in charge of and was responsible to the company for the conduct of its business. It was held that the requirement of Section 141 was not met and the complaint against the accused was quashed. Similar was the position in Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd. [(2002) 7 SCC 655 : 2003 SCC (Cri) 151] This was a case of a partnership. It was found that no allegations were contained in the complaint regarding the fact that the accused was a partner in charge of and was responsible to the firm for the conduct of business of the firm nor was there any allegation that the offence was made with the consent and connivance or that it was attributable to any neglect on the part of the accused. It was held that no case was made out against the accused who was a partner and the complaint was quashed. The latest in the line is the judgment of this Court in Monaben Ketanbhai Shah v. State of Gujarat [(2004) 7 SCC 15 : 2004 SCC (Cri) 1857] . It was observed as under: (SCC p. 17, para 4)

> "4. It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole. If the substance of the allegations made in the complaint fulfil the requirements of Section 141, the complaint has to proceed and is required to be tried with. It is also true that in construing a complaint a hypertechnical approach should not be adopted so as to quash the same. The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in enactment of Sections 138 and 141 has to be borne in mind. These provisions create a statutory presumption of dishonesty, exposing a person to criminal liability if payment is not made within the statutory period even after issue of notice. It is also true that the power of quashing is required to be exercised very sparingly and where, read as a whole, factual foundation for the offence has been laid in the complaint, it should not be quashed. All

> the same, it is also to be remembered that it is the duty of the court to discharge the accused if taking everything stated in the complaint as correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking. The present case falls in this category as would be evident from the facts noticed hereinafter.”

It was further observed: (SCC pp. 18-19, para 6)

> “6. … The criminal liability has been fastened on those who, at the time of the commission of the offence, were in charge of and were responsible to the firm for the conduct of the business of the firm. These may be sleeping partners who are not required to take any part in the business of the firm; they may be ladies and others who may not know anything about the business of the firm. The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when first the complainant makes necessary averments in the complaint and establishes that fact. The present case is of total absence of requisite averments in the complaint.”

12.This legal principle and position is applicable to the facts of the present case on hand. Hence, this Court finds that there is no factual averments to show how the petitioner is responsible for the business and conduct of A1 company to invoke provision under Section 141 of the Negotiable Instruments Act.

13.Further, the petitioner/A3 is no more Director of the A1 company on the date of cheque i.e., on 07.09.2012, since she resigned from the company on 10.10.2011. In support of the contention, the petitioner produced Form 32 to that effect, which is at page No.6 of the typed set. The petitioner is a lady.

14.For the aforesaid reason, these Criminal Original Petitions are allowed and the proceedings in S.T.C.Nos.690 & 688 of 2014, on the file of the Judicial Magistrate Court No.II, Tiruppur are, hereby, quashed, as against the petitioner/A3 alone. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate Court No.II,
Tiruppur.

Crl.O.P.Nos.9852 & 9853 of 2015

BR(CO)
RV(24/11/2020)