

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.12.2020
Pronounced on : 22.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.No.30084 of 2019
and
Crl.M.P.Nos.16277 & 16278 of 2019

1.P.Sathyavathy
2.N.Karthiga
3.N.Paraneetharan,
S/o.Natarajan

4.N.Vishnurajan Petitioners /Accused 2 to 5

versus

M/s.K.S.Garments,
Represented by its Managing Partner,
Karunanidhi Valarmathy,
W/o.R.Ganesan,
No.8/259, A-2, Amman Nagar,
Pooluvapatti Pirivu, P.N.Road,
Tiruppur - 641 601.Respondent /Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, seeking to call for the records of the private complaint in STC.No.3174 of 2019 on the file of the learned Judicial Magistrate No.I, Tiruppur and quash the same in so far as the petitioners/accused 2 to 5 are concerned.

For Petitioners : Mr.K.J.Parthasarathy

For Respondent : Mr.V.Vijayakumar

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O R D E R

This Criminal Original Petition has been filed praying to call for the records pertains to the private complaint in STC.No.3174 of 2019 on the file of the learned Judicial Magistrate No.I, Tiruppur and quash the same, as far as the petitioners are concerned, as illegal.

2. Heard Mr.K.J.Parthasarathy, learned counsel appearing for the petitioners and Mr.V.Vijayakumar, learned counsel appearing for the respondent.

3. The above referred case has been filed by the respondent / complainant against M/s.Victory Associates, who is arrayed as first accused firm and against the partners, who are arrayed as accused 2 to 5 and the petitioners being the accused 2 to 5 in the said case has filed this Criminal Original Petition, for the relief stated supra.

4. Hereinafter, for easy reference, the petitioners are called as accused and the respondent is called as complainant.

5. The case of the complainant before the trial Court is that, one M/s.Victory Associates, who is the first accused firm in the above referred STC, gave work order to one Samanna Fashions in the month of January 2019 and the said Samanna Fashions gave suborder to the respondent / complainant for manufacturing of "Round Neck Short Sleeve T-Shirt" in four colours for the terms of 20% advance and the balance 80% payment will be cash and carry.

6. On 05.04.2019, Samanna Fashions approved the complainant to supply the goods to the first accused firm on credit basis and got balance payment of Rs.11,61,824/- from the first accused firm. The first accused firm received the goods towards the payment and issued post dated cheque dated 10.04.2019 drawn on Tamil Nadu Mercantile Bank Limited, Karur Branch, bearing Cheque No.724347 and the complainant presented the said cheque for encashment through its banker, namely, Yes Bank Limited on 15.04.2019 and the same was dishonoured on 16.04.2019, by stating the reasons that "Payment Stopped by the Drawer".

7. On the instructions given by the accused, the complainant again represented the cheque on 20.05.2019 and the said cheque has been returned on 21.05.2019, for the reasons "Exceeds Arrangement". Therefore, the complainant sent a legal notice dated 08.06.2019, for which, the accused sent a reply notice on 14.06.2019 and hence, the present complaint.

8. The learned counsel appearing for the accused would contend that during the time of business transaction happened between the first accused firm and the complainant, the petitioners have discharged from the partnership firm. The learned counsel further added that the accused nos.2 and 3 are relieved from the partnership firm on 02.04.2018 and accused no.4 was relieved on 19.11.2018. On the other hand, accused no.5

is not at all a partner in the first accused firm. Since the alleged transaction had happened in the year of 2019, from the date of inception of the order placed by the accused firm, the petitioners are not participated in the business transaction. Therefore, the proceedings initiated against them is an abuse of process of law.

9. Per contra, the learned counsel appearing for the complainant would submit that all the petitioners herein are related with the person, who signed in the cheque, now he has been arrayed as 6th accused and only for the purpose of evading the payment, the petitioners are before this Court and therefore, the grounds raised by the petitioners cannot be looked into.

10. The learned counsel appearing for the complainant relied on the decision in RALLIS INDIA LTD. vs. PODURU VIDYA BHUSAN & OTHERS reported in (2011) 13 SCC 88 wherein our Hon'ble Apex Court has held as follows;

"15. Strictly speaking, the ratio of the SMS Pharmaceuticals (supra) can be followed only, after the factum that accused were the Directors or Partners of a Company or Firm respectively at the relevant point of time, stands fully established. However, in cases like the present, where there are allegations and counter-allegations between the parties regarding the very composition of the firm, the above rule of 'specific averment' must be broadly construed. Indeed, it would be nothing short of a travesty of justice if the Directors of a Company or Partners of a Firm, who, having duped a third-party by producing false documents (like a fake partnership deed) or making false statements (that some others were in charge of the Company/Firm), at a subsequent stage, seek protection from prosecution on the ground that they were not directly indicted in the complaint - such a proposition strikes against one of the very basic tenets of the law of natural justice, which is, that none shall be allowed to take advantage of his own default. Of course, the above observation is of a general nature, and has no bearing on the present case, but nonetheless, the power to quash a criminal proceeding with respect to an offence under Section 141 of the Act, must be exercised keeping this advisory note and caveat in mind."

11. However, in the same judgment, our Hon'ble Apex Court has held as follows;

"12. The primary responsibility of the complainant is to make specific averments in the complaint so as

to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, proviso to Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his knowledge or he had exercised due diligence to prevent the commission of such offence, he will not be liable of punishment."

12. Accordingly, the complainant has to prove that the offence narrated by him was committed within the knowledge of all Directors. But here it is a case, the averments found in the complaint did not say that the petitioners are directly participated in the business transaction.

13. The learned counsel appearing for the complainant further relied on the judgment in MALWA COTTON & SPINNING MILLS LTD. vs. VIRSA SINGH SIDHU & OTHERS reported in (2008) 11 SCC 147 wherein our Hon'ble Apex Court has observed as follows;

"8. We find that the prayers before the courts below essentially were to drop the proceedings on the ground that the allegations would not constitute a foundation for action in terms of Section 141 of the Act. These questions have to be adjudicated at the trial. Whether a person is in charge of or is responsible to the company for conduct of business is to be adjudicated on the basis of materials to be placed by the parties. Sub-section (2) of Section 141 is a deeming provision which as noted supra operates in certain specified circumstances. Whether the requirements for the application of the deeming provision exist or not is again a matter for adjudication during trial. Similarly, whether the allegations contained are sufficient to attract culpability is a matter for adjudication at the trial."

14. Applying the ratio laid down in the above referred judgment, though our Hon'ble Apex Court has stated that the details of transaction has to be proved only during the time of trial, now this proceedings was initiated by the petitioners stating that at the relevant point of time, they are not partners in the firm.

15. In the said circumstances, the learned counsel appearing for the accused relied on the judgment of our Hon'ble Apex Court in the case of KATTA SUJATHA vs. FERTILIZERS & CHEMICALS TRAVANCORE LTD. reported in (2002) 7 SCC 655 wherein it has held as follows;

"4.....This Court explained the meaning by observing that the term "person in charge" must mean that the person should be in overall control of the day-to-day business of the company or firm. The person should (sic may) be a party to the policy being followed by a company and yet not be in charge of the business of the company or may be in charge of but not in overall charge or may be in charge of only some part of the business."

16. Further, he relied on the judgment of the same Court in MONABEN KETANBHAI SHAH & ANOTHER vs. STATE OF GUJARAT & OTHERS reported in (2004) 7 SCC 15, wherein our Hon'ble Apex Court has held as follows;

"7. In K.P.G. Nair v. Jindal Menthol India Ltd. [(2001) 10 SCC 218], this Court held that the substance of allegations read as a whole should answer and fulfill the requirements of the ingredients of Section 141. The criminal complaint was quashed in Katta Sujatha (Smt.) v. Fertilizers & Chemicals Travancore Ltd. & Anr. [(2002) 7 SCC 655], since in the complaint it was not stated that the accused was in charge of the business and was responsible for the conduct of the business of the firm nor was there any other allegation that she had connived with any other partner in the matter of issue of cheque."

17. Yet another judgment in S.M.S. PHARMACEUTICALS LTD. vs. NEETA BHALLA AND ANOTHER reported in (2005) 8 SCC 89, our Hon'ble Apex Court has held as follows;

"Under Section 141 what is required is that the persons who are sought to be made criminally liable should be, at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. The liability arises on account of conduct, act or omission on the part of a person and not merely on account of holding an office or a position in a company."

18. Further, in the case of HARSHENDRA KUMAR D. vs. REBATILATA KOLEY reported in (2011) 3 SCC 351, our Hon'ble Apex Court has held as follows;

"17. In this view of the matter, in our opinion, it must be held that a Director, whose resignation has

been accepted by the company and that has been duly notified to the Registrar of Companies, cannot be made accountable and fastened with liability for anything done by the company after the acceptance of his resignation. The words "every person who, at the time the offence was committed", occurring in Section 141 (1) of the NI Act are not without significance and these words indicate that criminal liability of a Director must be determined on the date the offence is alleged to have been committed."

19. Therefore, the catena of judgments rendered by our Hon'ble Apex Court is very clear that if the instructions given by the partners in respect to the relieving of the partnership is accepted by the Registrar, Section 141(1) of N.I. Act, is no significance. Here it is a case, the documents relied on by the accused proves that only on 15.01.2019, Samanna Fashions had issued a purchase order. Only on the strength of the said document, the subsequent transactions had happened between the first accused firm with the complainant.

20. But here it is a case, the Registrar of Firms on 04.12.2018 itself accepted the declaration given by the petitioners. Therefore, it cannot be said that during the relevant point of time, the petitioners are actually participated in the affairs of the company. However, the reply notice dated 14.06.2019 sent by the M/s.Victory Associates (first accused firm), it was mentioned as the first accused firm consists of 2 partners, one is N.Paraneetharan, who is the third petitioner herein and one K.Nagarajan, who is arrayed as 6th accused. Therefore, the accused himself admitted that the third petitioner herein is a partner in the accused firm. In otherwise, in respect to the 4th petitioner, no evidence was produced on the side of the complainant that he is a partner in the first accused firm. सत्यमेव जयते

21. Accordingly, by following the judgments relied on by the learned counsel appearing for the petitioners and in the light of the above discussions, I conclude that the proceedings initiated against the petitioners 1, 2 and 4 alone are liable to be quashed. Accordingly, it is quashed. This Criminal Original Petition is allowed as far as petitioners 1, 2 and 4 are concerned.

22. In respect to the third petitioner, this Criminal Original Petition is dismissed. The trial Court is directed to dispose the STC.No.3174 of 2019 as early as possible preferably within a period of six (6) months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

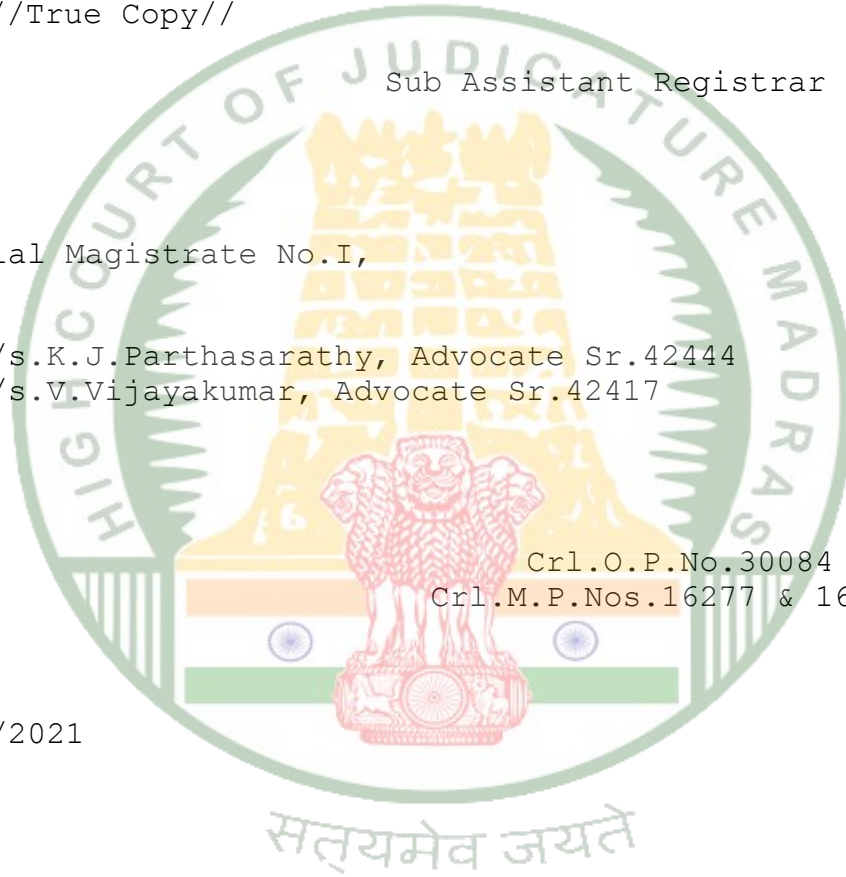
sri
To

The Judicial Magistrate No.I,
Tiruppur.

+3cc to M/s.K.J.Parthasarathy, Advocate Sr.42444
+1cc to M/s.V.Vijayakumar, Advocate Sr.42417

Crl.O.P.No.30084 of 2019 and
Crl.M.P.Nos.16277 & 16278 of 2019

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