



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2020

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD)No.11799 of 2018

and

Crl.M.P. (MD)Nos.5343 and 5344 of 2018

WEB COPY

1.Geetha
2.Sundeeep

... Petitioners/A3 & A4

Vs.

Si.Sankarganesh

... Respondent/Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records of the case in S.T.C.No.535 of 2018 on the file of learned Judicial Magistrate, Srivaikundam and quash the same.

For Petitioners : Mr.N.Dilip Kumar
For Respondent : Mr.V.Angusamy

O R D E R

Heard the learned counsel on either side.

2. The petitioners herein are figuring as A3 and A4 in S.T.C.No.533 of 2018 on the file of learned Judicial Magistrate, Srivaikundam. The petitioners are no doubt wife and son of A2/Jegannath. Jegannath is the managing partner of Rose Engineering Firm Aqua Division. He had signed the cheque in question. The petitioners herein have been arrayed as accused only in the capacity as partners. But then the essential ingredients that are necessary to implicate a partner as an accused are wholly absent in this case. The learned counsel appearing for the petitioner placed reliance on the decision of the Hon'ble Supreme Court reported in **(2005) 8 SCC 89 (S.M.S.Pharmaceuticals Ltd., v. Neetha Bhalla and Another)**. The Hon'ble Supreme Court held as follows:-

"To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a persons can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a Company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That respondent



falls within parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141 he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial."

3.Applying the ratio laid down in the aforesaid decision, I must necessarily hold that the impugned complaint is not maintainable against the petitioners herein. The petitioners herein could have been arrayed as accused in their vicarious capacity as partners of the accused firm only if they were in charge of the affairs of the firm. In the complaint in question no such averment is present. Therefore, the impugned complaint cannot be said to be maintainable against the petitioners. In that view of the matter, the impugned complaint stands quashed as regards the petitioners are concerned and it will of course go on against A1 and A2. The criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To:

The Judicial Magistrate,
Srivaikundam.

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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(1/2)