IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.NO.10123 OF 2016
AND
CRL.M.P.NOS.5394 AND 5395 OF 2016

1. Rabindra Kumar Samal
   Director,
   392 & 393, Anjali Towers,
   Rajiv Gandhi Salai,
   Kottivakkam,
   Chennai - 600041.

2. Mr.Ravi Kamalanathan
   Additional Director,
   M/s.Arohi Infrastructure
   Private Limited,
   24/35-A, Thiru Vi Ka Street,
   Nehru Nagar,
   Velacherry,
   Chennai - 600042.

... Petitioners

Vs.

M/s.Tata Capital Financial Services Limited,
"One Forbes",
Dr.V.G.Gandhi Marg,
Fort Mumbai,
Maharastra - 400079,
Represented by its Authorised
Representative Mr.Venkatesh Kap

... Respondents

Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records and quash the complaint in C.C.No.6477 of 2014 on the file of XVIII

Metropolitan Magistrate, Saidapet with regard to the petitioners herein.

For Petitioners : Mr.D.Baskar

For Respondent : Mr.K.R.Ramakrishnan
For M/s.Surana and Surana

ORDER

This Criminal Original Petition has been filed to call for the records and quash the complaint in C.C.No.6477 of 2014 on the file of XVIII Metropolitan Magistrate, Saidapet, with regard to the petitioners herein.

2. The respondent has filed a complaint against the petitioners in C.C.No.6477 of 2014 on the file of XVIII Metropolitan Magistrate, Saidapet, for the offence under Section 138 read with Section 142 of the Negotiable Instrument Act 1881.

3. The respondent has alleged that the 1st accused - M/s.Arohi Infrastructure Private Limited had issued optionally convertible debentures to the tune of Rs.50,00,00,000/- upon certain terms and conditions mentioned therein. To discharge the said liability, the 1st accused issued a cheque bearing No.013716 dated 31.07.2014 duly signed by the Accused Nos.2 & 3 being Authorised Signatories drawn on Axis Bank Limited, Thiruvanmiyur, Chennai - 41, for Rs.35,00,000/-. The Accused 4 & 5 are directors of the 1st accused and they were authorised to execute and carry out all deeds as may be required with the issuance of the debentures. The Accused Nos.6 and 7 are Directors and Additional Director of the 1st accused and they were fully aware of the issuance of the cheque. The cheque was presented and the same was returned on 02.08.2014. The Complainant issued statutory notice on 25.08.2014 and the same was served on 27.08.2014. Since the amount was not paid, the complaint has been filed.

4. Challenging the said complaint, the petitioners have filed this Writ Petition before this Court stating that the petitioners were neither the Directors nor they played any role in the day to day affairs of the management of the 1st Accused Company. As per the law laid down by the Hon'ble Supreme Court,

for making a Director of a Company liable for the offences committed by the Company under Section 141 of the N.I. Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company. Admittedly, the respondent has not averred any word as to how the petitioners played role in the day to day affairs of the management of the 1st Accused. On the other hand, the respondent has specifically averred that only the 2nd Accused was in charge of the day to day activities of the 1st Accused Company. Hence, the complaint is liable to be quashed.

5. It is further stated in the petition that the respondent has himself averred in the cause title that the 2nd Accused is the Chairman and Managing Director of the 1st Accused. To enable the court to arrive at a prima facie opinion that the accused is vicariously liable, Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable there for. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company. By verbatim reproducing the wording of the Section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under Section 141 of the N.I. Act.

6. It is also stated in the petition that the alleged date of issue of cheque was on 31.07.2014. On perusal of Form-32, it is patently evident that the 1st petitioner was ceased to be the Director from 09.09.2013 itself. As far as the 2nd petitioner is concerned, he ceased to be the Director from 10.07.2014. Thus, the petitioners were not at all the Directors of the 1st Accused and hence they cannot be made liable or made responsible for the prosecution.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondent, and perused the materials available on record.

8. On perusal of the records, it is seen that the 1st Accused is a Private Limited Company and the petitioners herein are the Directors of the 1st Accused. The petitioners, on behalf of the 1st accused, had issued a cheque for a sum of Rs.35,00,000/- to the respondent / complainant towards the part payment of the liability of the 1st accused. When the cheque was presented by the complainant, the same was returned as "In Sufficient Funds". Hence, the complaint has been preferred.

9. On perusal of the complaint under Section 200 read with Section 190(A) of Cr.P.C., it is seen that 1st accused namely M/s.Arohi Infrastructure Private Limited is a subsidiary company of MARG Limited, having its office at Nos.392 & 393, Anjali Towers, Rajiv Gandhi Salai, Kottivakkam, Chennai - 600 041. The 1st petitioner herein is the Director and the 2nd petitioner is the Additional Director of the 1st Accused Company. The 1st accused had issued Optionally Convertible Debentures to the tune of Rs.50,00,00,000/- (Rupees Fifty Crores) in favour of the respondent / complainant upon certain terms and conditions. The petitioners, to discharge a part of the liability of the 1st accused, had issued a Cheque dated 31.07.2014 bearing No.013716 duly signed by the Accused Nos.2 & 3 being Authorised Signatories, drawn on Axis Bank Limited, Thiruvanmiyur, Chennai - 41, to the respondent / complainant for a sum of Rs.35,00,000/- (Rupees Thirty Five Lakhs). The respondent / complainant had presented the Cheque though its bankers, but the same was returned on 02.08.2014 with the endorsement "Insufficient funds".

10. It is further seen from the complaint that the respondent / complainant issued a Statutory Notice through its counsel on 25.08.2014 demanding the cheque amount within 15 days from the date of receipt of the said notice. The notice sent to the 6th accused has been returned with an endorsement "Door locked" and the Acknowledgement cards have not been received from the other accused. The respondent, through its counsel, filed a complaint with the Post Master - Mylapore H.O, Chennai vide letter dated 29.09.2014 and requested an update on the delivery of the above notice. The Department of Posts has informed that the notice was delivered to all the other accused except A6 on 27.08.2014. So, in spite of the above notice, the petitioners have neglected to pay the cheque amount within the

days specified in the demand notice and hence the above complaint has been preferred.

11. The learned counsel for the respondent has filed a certified copy of the Resolution passed in the Board Meeting held on 16.08.2011, wherein, it is clearly seen that the respondent was allotted optionally convertible debentures to the tune of Rs.50,00,00,000/- (Rupees Fifty Crores) by the 1st Accused Company M/s.Arohi Infrastructure Private Limited.

12. It is contended by the learned counsel for the petitioners that the petitioners were not working as Directors of the 1st Accused Company at the time of issuance of the alleged cheque and they were ceased from the said post prior to issuance of the cheque on 31.07.2014. In support of his contention, he filed a certified copy of Form 32 issued by the Registrar of Companies (ROC), but wherein, it is seen that the 1st petitioner alone was ceased from the post of Director prior to issuance of the cheque and the 2nd petitioner was working in the said post at the time of issuance of the cheque. However, it is denied by the learned counsel for the respondent by contending that mere production of certified copy of Form 32 is not sufficient to prove that the petitioners have resigned from the company before issuing the cheque and he has to show cause as to why he resigned from the company.

13. In support of his contention, the learned counsel for the respondent has placed reliance on the Judgment of Bombay High Court in the case of Suhas Bhand Vs. State of Maharashtra and Ors, wherein, it is stated in Paragraph No.33 as follows :

> “33. A reading of these judgments makes for the following legal propositions with regard to the resignation of a Director of a registered company :
>
> “(i) If the accused in a criminal prosecution under Section 138 of the Negotiable Instruments Act produces a certified copy of Form No.32 certified by the ROC and there is no

dispute of the factum of his resignation, the accused is entitled to be discharged from the prosecution.

(ii) If his resignation is not accepted or admitted by the complainant upon production of the certified copy of Form No.32, the accused would have to prove the truth of the contents of the said certified copy i.e. the factum of his resignation. Such accused cannot be discharged simplicitor upon production of a certified copy of Form No.32.

(iii) If the complainant produces any evidence showing the continuance of the accused as Director of the Company after the date of the resignation claimed by him as per the certified copy of Form No.32 produced by him, such accused cannot be discharged simplicitor upon production of such certified copy of Form No.32. He would have to lead evidence to prove the factum of his resignation. Similarly, the complainant would be entitled to prove the factum of his continuing as Director. The trial under Section 138 read with Section 141 of the Negotiable Instruments Act would, therefore, proceed."

14. In view of the above judgment relied on by the learned counsel for the respondent, it is made clear that if the resignation of a Director of a company is not accepted or admitted by the complainant in a criminal prosecution, he would have to prove the factum of his resignation. In the present case, the petitioners have produced only the certified copy of Form 32 to prove their resignation and they have not placed any other material to show the factum of their resignation. Hence, this Court is of the view that the criminal case filed by the complainant in C.C.No.6477 of 2014 shall be proceeded before the Trial Court against the petitioners. The petitioners are at liberty to produce all the documents they rely upon to prove their case.

15. Accordingly, this Criminal Original Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

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To

The XVIII Metropolitan Magistrate,
Saidapet.

+1cc to M/s.Surana and Surana, Advocate, S.R.No.55234

CRL.O.P.No.10123 of 2016
and
CRL.M.P.Nos.5394 and 5395 of 2016

KG(CO)
RLP(12/11/2021)