IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2021

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.NOS.10825 AND 10826 OF 2015
AND
CRL. M.P NOS.1 & 2 OF 2015

1. Ramasamy Selvam
Director, M/s. Mehala Castings and Components Pvt. Ltd.
147/14, Valayankadu Main Road,
Kumar Nagar South, Tiruppur – 641 603.

2. Chinnaiya Gounder Subramaniam,
Director, M/s. Mehala Castings and Components Pvt. Ltd.
1, College Road, II Cross Street,
Odakkadu, Tiruppur – 641 602.

...Petitioners
(In both petitions)

.Vs.

M/s.M.S. Metals and Steels (P) Ltd.,
Rep by its Senior Executive Marketing,
V. Vimal V. Shah,
No.VI(A), Calve Chateau,
No.808, Poonamallee High Road,
Chennai – 600 010.

...Respondent
(In both petitions)

COMMON PRAYER:

Criminal Original Petitions are filed under Section 482 Cr.P.C., to call for the records relating to in C.C.Nos.367 and 368 of 2015 on the file of the Judicial Magistrate Court No.1, Tiruppur and quash the same.

For Petitioners : Mr.T.Murugamanickam
(in both)

For Respondent : Mrs.Thenkodi Annam Nelson
For Mrs.S.C.Franco Louis
(in both)

C O M M O N O R D E R

These Criminal Original Petitions have been filed seeking to call for the records relating to in C.C.Nos.367 and 368 of 2015 on the file of the Judicial Magistrate Court No.1, Tiruppur and quash the same.

2. The case of the petitioners is that the complainant/respondent herein has made a complaint against the petitioners among others in C.C. Nos.367 and 368 of 2015 on the file of the learned Judicial Magistrate Court No.I, Tiruppur for alleged offences punishable under Sections 138 r/w Section 142 of the Negotiable Instrument Act. The complaint is that the complainant/respondent herein had supplied waster and scrap of Iron and Steel to M/s.Mehala Castings and Components Pvt. Ltd in which the petitioners are directors and towards such supplies, 8 cheques were issued to the total value of Rs.24,00,000/-. When the said Cheques were presented for collection, they were returned by their Bank with a memo "Account Closed". In view of the return of said cheques, the complainant/respondent herein had issued a Statutory Notice dated 12.01.2015 under Section 138 of the Negotiable Instrument Act, demanding payment of the amount due on these Cheques. Thereafter, the petitioners herein have sent a reply notice dated 22.01.2015 stating that the company is not functioning from January 2014, and that the Managing Director would have issued the cheques on his own accord, and the complainant/respondent herein was called upon to indicate the name of the person who had drawn the cheques and to send a copy of the cheques. Further, It was also stated that the accused company was entirely managed by the Managing Director Mr. Rathinasamy and that, these petitioners were not at all involved in the day to day affairs of the company. Further, the respondent/complainant did not send the xerox copy of the cheques as demanded by the petitioners and rebutted the allegations made in the reply notice. Thereafter, the respondent/complainant instituted the complaint against the petitioners in C.C. Nos.367 and 368 of 2015 on the file of the Judicial Magistrate Court-I,Tiruppur. Against the aforesaid complaints made by the complainant/respondent herein, the petitioners have filed the present Criminal Original Petitions to quash the same.

3. The learned counsel for the petitioners submitted that the learned Magistrate ought not to have taken cognizance of the complaint against these petitioners while there is no specific allegations made against these petitioners about their role in issuing the cheques in question and its subsequent dishonour.

4. The learned counsel relying on the Judgment of the Supreme Court in the case of "Pooja Ravinder Vs. State of Maharastra reported in JT 2014 [14]SC 1, pointed out the following observations made therein:

"(i) to fasten vicarious liability under Section 141 of the Act on a person, at the material point of time, the person should have been at the helm of the affairs of the company and particularly responsible for the conduct of its business.

(ii) the complaint must disclose the role of the [directors] in the affairs of the company and in what manner the [directors] were responsible for the conduct of the business of the company.

In view of the aforesaid observations made by the Supreme Court, as the petitioners are not responsible in issuing the cheques, the learned counsel for the petitioners prays this Court to call for the records in C.C. No.368 of 2015 on the file of the Judicial Magistrate, Tiruppur and quash the same.

5. Per contra, the learned counsel appearing for the respondent had filed the counter affidavit denying all the averments made in the petition filed by the petitioners wherein it has been stated that the respondent supplied "Waste and Scrap of Iron and Steel to M/s. Mehala Castings & Components P. Ltd in which the petitioners were directors on various dates. In view of the supply of the material to the petitioner company, it is liable to pay the amount towards their debit. Hence, the petitioner company had issued 8 cheques each Rs.30,000/- to the total value of Rs.24,00,000/- on various dates. The aforesaid cheques were presented for collection through respondent's bankers viz., ICICI Bank at Kilpauk Branch on 06.01.2015. The said cheques were returned on 07.01.2015 as unpaid with the endorsement of "Account Closed". It will not be out of place to mention that after the first batch of cheques for the 24 Lakhs were returned by Memo dated 03.01.2015, with the endorsement "Exceeds arrangement". After that, the account has been closed deliberately by the petitioner company. Consequently, the second batch of cheques for Rs.24 Lakhs were returned with the Memo dated 07.01.2015 endorsing "Account Closed". Subsequent to the return of the cheques, the respondent/complainant issued a statutory notice dated 12.01.2015 under Section 138 of the Negotiable Instrument Act demanding the payment of amount due on the 8 cheques totaling to Rs.24 Lakhs for the supply of the material.

6. In the counter affidavit, the Respondent/Complainant extracted the below relevant portion of the Statutory Notice CFL/SdK:12.01.2015

"Our Client states you have issued an email dated 22.01.2014 which reads as follows:

"Dear Sir,

> We hereby confirm that the balance outstanding as per our books of accounts as on 22.01.2014 is Rs.69,86,275/-. Issued but not cleared cheques are not accounted in our books. Please find attached our account statement as on 22.01.2014.

However, in reply to the Statutory notice the petitioner/accused forwarded their letter dated 22.01.2015 mentioning inter alia

4. Your Clients may be advised to furnish a copy of the Cheque leaf to our client for their investigation. Our client sincerely believe that Mr. Rathinasamy, when he was managing the affairs of the Company, might have parted the Cheques with your client that is before March 2013.

> 5. The fact is that the company was entirely managed by the then Managing Director Mr. Rathinasamy and he had misused his office during his tenure. There was absolutely no occasion for our clients, to issue any cheque to your clients in the month of November, December 2014."

Further, the respondent/Complainant forwarded their rejoinder dated 14.02.2015 as follows:

> "We are in receipt of your reply notice dated 22.01.2015. Our client states your clients want to project an innocent face though fully involved, obviously on legal advice. Your client admits that Mr. Rathinasamy was the Managing Director of the Company. Your Client do not deny that Mr.Ramasamy Selvam and Mr. Chinnaiya Gounder Subramanian were/are Directors of the Company.
>
> Our Client states that your clients were in charge of and responsible for the affairs of the company.
>
> Our Client states use/misuse of the office of the Managing Director has nothing to do with our clients, and is purely an internal matter of your client."

Email referred to in para 7 of your notice as emanated upon from your clients companies email ID to your client and copy has also been marked to officials of your company. Our client wonders how your clients can disown mails emanating from your clients companies email ID to our client, and also marked to officials of your client. Thus, the statutory notice dated 12.01.2015 and the rejoinder dated 14.02.2015 clearly mentioned the petitioner/accused are in-charge of and responsible for the affairs of the company.

7. It has been further submitted that the complaint will not be maintainable without the statutory notice under Section 138 of the Negotiable Instrument Act and therefore the notice under Section 138 of the Negotiable Instrument Act, being a statutorily vital document, has to be looked into, along with re-joinder to find out the respondent/complainant's case.

8. In the complaint dated 26.02.2015, the respondent/ complainant has specifically stated in Para 1 as follows:

> "1.The Complainant and the 1st accused are the companies registered under the Companies Act. The accused No.2 to 4 are the directors in the Accused No.1 company. The Accused Nos.2 to 4 are actively participating in the affairs of the 1st accused Company...
>
> 2. Towards the supplies, the Accused No.4 on behalf of the Accused No.1 and with the consent of the Accused Nos.2 & 3 had issued Post Dated Cheques on various dates drawn on the Oriental Bank of Commerce, Vallipalayam Branch, Thirupur - 641 601 and bearing Nos575323, 575326, 575327, 575329m 575330, 575332, 575333m 575335 dated 03.11.2014, 05.11.2014, 09.11.2014, 11.11.2014, 13.11.2014, 15.11.2014, 17.11.2014 for an amount of Rs.3,00,000/- each in favour of the Complainant. The Total Cheque amount is Rs.24,00,000/-. The above cheques were issued towards part satisfaction.

9. It has been explicitly averred in the complaint that the directors have actively participated in the affairs of the 1st accused company and that towards the supplies, Accused No.4 with the consent of the Accused Nos.2 & 3 have issued the Post Dated Cheques. Since the complaint discloses that the petitioners were/are directors of the Company at the relevant point of time, and the concerned Cheques were issued with their consent towards the supplies made and hence, this would be prima-facie sufficient to constitute an offence under Section 141 of the N.I. Act.

10. In the present case, it is reiterated that (1). the Statutory notice, (2). the rejoinder and (3). the complaint read together clearly establishes the fact that:

> "1. The Accused Directors are in charge of and responsible for the day-to-day affairs of the Company.
>
> 2. Accused Directors 2 to 4 actively participated in the affairs of the 1st accused company.

> 3. Accused Director No.4 with the consent of the Accused Directors 2 & 3 have issued the Post Dated Cheques."

11. It has further been submitted that apart from the Cheques, Statutory Notice and the re-joinder, are part and parcel of the complaint dated 26.02.2015 and therefore, the complaint cannot be looked into in isolation but have to be read together with the documents and not disjointly. Therefore, it is respectfully submitted pre-requisites of Section 141 of Negotiable Instrument Act has been complied with.

12. The Counter further states that if there is no statutory notice, no complaint is maintainable, and consequently no court can take cognizance of any offence punishable Under Section 138 of N.I. Act. On the contrary, it is open to the Magistrate to take cognizance against the petitioners on the contents of the complaint and documents submitted in support thereof.

13. It is further submitted that the petitioner/accused made averments that the Managing Director Mr. Rathinasamy who had misused his office during his tenure, has nothing to do with the respondent/complainant and is purely an internal matter of the petitioner company and at best is a matter for trial. The complainant being the outsider cannot be aware of the internal business of the accused company.

14. Relying on the Judgment of the Supreme Court in the case of "N. Rangachari Vs. Bharat Sanchar Nigam Ltd." reported in AIR 2007 S.C. 1682, wherein it has been held that

> "14. A person normally having business or commercial dealings with a company, would satisfy himself about its creditworthiness and reliability by looking at its Promoters and Board of Directors and its nature and extent of its business and its memorandum or Article Association. Other than that, he may not be aware of the arrangements within the company in regards to its management, daily routine etc;. Therefore, when the Cheque issued to him by the Company is dishonored, he is expected only to be aware generally of who are in charge of the affairs of the Company. It is not reasonable to expect him to know whether the person who signed the Cheque was instructed to do so when he actually signed the cheque. Those are matters peculiarly within the knowledge of the company and those in charge of it. So, all that a payee of a Cheque that is dishonored can be expected to allege is that the persons name in the complaint are in charge of its affairs. The Directors are preimafacie in that position.

> 19. We think that, in the circumstances, the High Court has rightly come to the conclusion that it is not a fit case for exercise of jurisdiction under Section 482 of the Code of Criminal Procedure for quashing the complaint. In fact, and advertence to Sections 138 and 141 of the Negotiable Instrument Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the Officers in charge of the affairs of the Company to show that they are not liable to be convicted. Any restricts on their power or existence of any special circumstances that make them not liable is something that is peculiarly within their knowledge and it is for them to establish at that trial such a restriction or to show that at the relevant time they were not incharge of the affairs of the company. Reading the complaint as the whole, we are satisfied that it is a case where the contentions sought to be raised by the appellant can only be dealt with after the conclusion of the Trial".

In view of the above, in the complaint and in the statutory notice, presumption under Section 139 of the Negotiable Instrument Act is that the accused are guilty. Accordingly, it is for the accused to prove that they are not guilty as the Company is run by its Board of Directors.

15. It has been further submitted in the counter that it has been held by the Hon'ble Supreme Court that there is no bar to take cognizance of the offence by the concerned magistrate on the return of cheques by the bank with the endorsement such as "Exceeds Arrangment" or "Account Closed". NEPC MICON LTD. AND OTHERS Vs. MAGMA LEASING LTD.: AIR 1999 S.C. 1952.

> 8. Secondly, proviso (c) gives an opportunity to the drawer of the cheque to pay the amount within 15 days of the receipt of the notice as contemplated in proviso (b) further, Section 140 provides that it shall not be a defence in prosecution for an offence under Section 138 that the drawer has no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that Section. Dishonouring the Cheque on the ground that account is closed is the consequence of the Act of the drawer rendering his account to a cipher. Hence, reading Sections 138 and 140 together, it would be clear that dishonour of the cheque by a bank on the ground that account is closed would be covered by the phrase "the amount of money standing to the credit of that account is insufficient to honour the cheuqe.

16. It has further been submitted that it will not be out of place to mention that the 2nd petitioner has issued cheques in favour of the respondent/complainant which have also bounced. Details of two such bounced cheques among others are given below:

Date	Cheque No.	Signed on behalf of	Amount
04.10.2013	010889	Mehala Castings and Components Pvt. Ltd.	500000/-
26.10.2013	010990	Mehala Castings and Components Pvt. Ltd.	520211/-

Thus, it is not as though only the Managing Director signed the cheques and they were not aware of the transactions. Therefore, the role of the Directors are all the matters to be decided at the Trial.

17. Heard the learned counsel for the petitioner and perused the material available on record.

18. On reading of the aforesaid Judgments relied by the learned counsel for the petitioner and the learned counsel for the respondent, it makes clear that the responsibility of the directors and day to day activities of the directors in the company would be disclosed in the Trial. Further, the reliance of the Judgment in the case of "Pooja Ravinder Devidasani Vs. State of Maharashtra and another" placed by the learned counsel for the petitioners wherein it is held that "the appellant was neither a Director f the accused company nor in charge of or involved in the day to day affairs of the company at the time of commission of the alleged offence. There is not even a whisper or shred of evidence on record to show that the appellant could be vicariously held liable for the offence with which she is charged". However, in the present case, it is admitted fact that the cheques were issued by the Directors with seal of the company and signature of the petitioners who were the directors in the company in favour of the respondent/complainant for the supply of the material.ie. waste and scrap of iron and steel to M/s. Mehala Castings and Components Pvt. Ltd. These cheques have been given for the business transaction held between the petitioner's company and the complainant's company. In such circumstances, the petitioners/Directors of the company have issued the said cheques in question in favour of the respondent/complainant. However, the petitioners herein are denying their liability and that the company is not functioning from January 2014 and the Managing Directors would have issued the said cheques on their own accord is not supported by any material evidence. Whether the company is not functioning from January 2014 and the petitioner were not directors in the company at that point of time could be tried and decided only in the Trial. Further

the aforesaid averments made by the petitioner is not acceptable while the petitioners have not produced any substantial material to prove that the directors have not involved in the affairs of the company and they were not responsible in the day to day activities of the company.

19. Further, in the complaint made by the complainant/ respondent it has been stated specifically that "1.The Complainant and the 1st accused are the companies registered under the Companies Act. The accused No.2 to 4 are the directors in the Accused No.1 company. The Accused Nos.2 to 4 are actively participating in the affairs of the 1st accused Company...

2. Towards the supplies, the Accused No.4 on behalf of the Accused No.1 and with the consent of the Accused Nos.2 & 3 had issued Post Dated Cheques on various dates..."

In the above complaint, the complainant had specifically explained the role of the petitioners in the day to day affairs of the company and in what manner the petitioners are not responsible for the conduct of the business of the company has to be proved by the petitioners beyond any doubt.

20. All these averments are factual in nature and the same has to be established only at the time of Trial.

21. In view of the above, the petitioners cannot seek to quash the C.C.Nos.367 and 368 of 2015 on the file of the Judicial Magistrate Court No.1, Tiruppur as they have failed to produce the substantial evidence to prove their averments before this Court. Hence, this Court is not inclined to accept the contentions of the petitioners.

21. In the result, these Criminal Original Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed.

S/d
Assistant Registrar(CS IV)

//True Copy//

Sub-Assistant Registrar

Lbm

To

1. The Judicial Magistrate Court No.1,
   Tiruppur

2. The Additional Public Prosecutor,
   High Court of Madras,
   Chennai.

+2ccs to Mrs.Thenkodi Annam Nelson, Advocate, SR.No.32318

CRL.O.P.NOS.10825 AND 10826 OF 2015 AND
CRL.M.P NOS.1 & 2 OF 2015

NRL(CO)
PBS(09/09/2021)