

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 01.03.2021
Coram
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
Crl.O.P.No.500 of 2021
and Crl.M.P.Nos.290 & 291 of 2021

1. K.Gopalsamy

2. C.Vijayalakshmi

...Petitioners/Accused 3 & 4

Versus

M/s.TRK Textiles India Private Limited Company,
Rep. By its Authorised Share Holder/Administrative Officer,
Mr.Sivasalapathy
S/O.Govindasamy,
Panchampalayam Village,
Kangeyam Taluk,
Tiruppur district.

...Respondent/Complainant

This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code praying to call for the records in STC.No.424 of 2019 on the file of the learned Judicial Magistrate, Kangeyam and quash the same.

For Petitioners	:	Mr.K.Myilsamy
For Respondent	:	No appearance

ORDER

This petition has been filed to quash the proceedings in S.T.C.No.424 of 2019, on the file of the learned Judicial Magistrate, Kangeyam.

2. The respondent has filed a complaint under Section 138 of the Negotiable Instruments Act against a partnership firm and its partners. The petitioners have been arrayed as accused 3 and 4 in the complaint.

3. The respondent has been served with notice and the name of the respondent has also been printed in the cause list. However, there is no representation for the respondent either in person or through counsel.

4. The main ground that was raised by the learned counsel for the petitioners is that the complaint filed by the respondent against the petitioners do not satisfy the requirements under Section 141 of the Negotiable Instruments Act. The learned counsel submitted that in the entire complaint, there is no whisper with regard to the role played by the

petitioners and as to how they had acted and discharged their duties in the day-to-day affairs of the partnership firms. The learned counsel in order to substantiate his submissions, referred to the judgment of this Court in P.N.Stalin vs L.Kuzhanthalvelu reported in 2019 (3) Madras Weekly Notes Crl. DCC 147.

5. The petitioners have been made as accused persons in their capacity as partners of the partnership firm which has been made as the first accused in the complaint. Admittedly, the cheque has been signed by the second accused. It is true that the Negotiable Instruments Act provides for applying the concept of vicarious liability in terms of Section 141 of the Act. However, in order to sustain the same, there must be specific allegations made in the complaint as to how and in what manner the partner was incharge of and responsible for conduct of the business of the firm. The same concept what is used for the director of a company is also applied when it comes to a partner belonging to a partnership firm.

6. In the present case, the allegations made in the complaint does not satisfy the requirements under Section 141 of the Negotiable Instruments Act, insofar as the petitioners are concerned. The continuation of the proceedings will amount to abuse of process of Court.

7. In the result, the proceedings in STC. No.424 of 2019, on the file of the learned Judicial Magistrate, Kangeyam, is hereby quashed and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rli
To
The Judicial Magistrate, Kangeyam.

+1 cc to M/s.K.Mayilsamy, Advocate Sr.No.12893

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PL(CO)
baf 11/05/2021