IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.09.2021

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THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Crl.OP.No.21540/2015 & M.P.Nos.1&2/2015

[Video Conferencing]

Hari Priya Murali ... Petitioner/Accused 3

Versus

Regent Finance Corporation Private Limited,
Represented by its Authorized Signatory Mr.O.P.Daga,
Office at No.60A, Chowringhee Road,
Kolkata – 700020.
... Respondent/Complainant

Prayer : - Criminal Original Petition filed under Section 482 of Cr.P.C to call for the entire records pertaining to proceedings in C.C.No.1910/2015 pending on the files of the learned FTC-I, Metropolitan Magistrate, Egmore at Chennai and quash the same.

For Petitioner : Mr.V.Srinivasan
for M/s.Om Sai Ram Associates

For Respondent : No appearance

ORDER

(1) Heard Mr.V.Srinivasan, learned counsel for the petitioner.

(2) Notice had been directed to the respondent on several occasions. But, in spite of notice being served and an affidavit also being filed, there is no appearance on behalf of the respondent.

(3) The present petition has been pending from the year 2015 and I do not think any advantage would accrue to either one of the two parties by keeping it pending for a further period of five years awaiting the appearance of the respondent.

(4) The present Criminal Original Petition has been filed

taking advantage of Section 482 of Cr.P.C., questioning the further continuation of CC.No.1910/2015 now pending on the file of the learned Metropolitan Magistrate, Fast Track Court-I at Egmore, Chennai, with respect to the present petitioner who has been arrayed as A3.

(5) The petitioner has been arrayed as A3 in view of the fact that she has been categorised as a Director of the A1/Company. The said complaint is dated 17.04.2015. It must be mentioned here that the facts indicate that A1/Company appears to have issued a cheque bearing No.306001 dated 31.12.2014 for a sum of Rs.3 Crores. It was presented on 20.02.2015 and it had been returned ''unpaid'', necessitating issuance of Advocate Notice on 04.03.2015 and after the expiry of the statutory period and prior to the period of limitation for filing the complaint, the complaint had been filed primarily under Sections 138 and 142 of the Negotiable Instruments Act, 1881. As stated in the complaint, the only averment made against the present petitioner/A3 is that she is the Director and therefore, she automatically became responsible and liable for the cheque which had been issued by the A1/Company in which purportedly the complainant had stated that the petitioner herein is the Director. It is also seen that A2 had stood as guarantor and in that capacity, A2 had also been arrayed as accused.

(6) The learned counsel for the petitioner, however brought to the notice of this Court that the petitioner herein had resigned from the post of Directorship on 01.12.2013 and Form-32 in this regard, which relates to particulars of appointment of Directors and changes among them in a Company, had been presented before the Registrar of Companies at Chennai, in accordance with Sections 303[2], 264[2], 266[1] and also 266 of the Companies Act, 1956.

(7) It is also informed by the learned counsel for the petitioner that this Form which was dated 01.12.2013, had been submitted on 02.12.2013.

(8) As pointed out above, the date of the cheque was 31.12.2014 which is subsequent to the date on which the petitioner had resigned from the Directorship. It had been dishonoured on 21.02.2015.

(9) The liability of a Director with respect to a cheque issued by a Company had come under consideration of the Hon'ble Supreme Court of India on several occasions.

(10) In the decision reported in 2007 [3] SCC 693 [Saroj Kumar Poddar Vs. State (NCT of Delhi) and Another], the Hon'ble Supreme Court had held as follows:-

> "12. A person would be vicariously liable for commission of an offence on the part of a company only in the event the conditions

precedent laid down therefor in Section 141 of the Act stand satisfied. For the aforementioned purpose, a strict construction would be necessary."

(11) The position had also been reiterated in the decision reported in 2010 [11] SCC 203 [Central Bank of India Vs. Asian Global Limited and Others], wherein the Hon'ble Supreme Court had held as follows:-

"16. It was further held that while a Managing Director or a Joint Director of the company would be admittedly in charge of the company and responsible to the company for the conduct of its business, the same yardstick would not apply to a Director. The position of a signatory to a cheque would be different in terms of sub-section (2) of Section 141 of the 1881 Act. That, of course, is not the fact in this case.

......

18. In this case, save and except for the statement that the respondents, Mr Rajiv Jain and Sarla Jain and some of the other accused, were Directors of the accused Companies and were responsible and liable for the acts of the said Companies, no specific allegation has been made against any of them. The question of proving a fact which had not been mentioned in the complaint did not, therefore, arise in the facts of this case..."

(12) In 2011 (1) SCC 176 [Pepsico India Holdings Pvt. Ltd., Vs. Food Inspector and Another], the Hon'ble Supreme Court had held as follows:-

"50. .... It is now well established that in a complaint against a company and its Directors, the complainant has to indicate in the complaint itself as to whether the Directors concerned were either in charge of or responsible to the Company for its day-to-day management, or whether they were responsible to the Company for the conduct of its business. A mere bald statement that a person was a Director of the Company against which certain allegations had been made is not sufficient to make such Director liable in the absence of any specific allegations regarding his role in the management of the Company. "

(13) In 2018 (14) SCC 202 [Ashoke Mal Bafna Vs. Upper India

Steel Manufacturing and Engineering Company Ltd.,], wherein the Hon'ble Supreme Court had held as follows:-

> "9. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business at the time of commission of an offence will be liable for criminal action. (See Pooja Ravinder Devidasani v. State of Maharashtra [Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378 : AIR 2015 SC 675] .)
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> 10. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the 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. "

(14) In AIR 2019 SCC 2518 [[A.R.Radha Krishna Vs. Dasari Deepthi and Ors.], the Hon'ble Supreme Court had held as follows:-

> "9. In a case pertaining to an offence under Section 138 and Section 141 of the Act, the law requires that the complaint must contain a specific averment that the Director was in charge of, and responsible for, the conduct of the company's business at the time when the offence was committed. The High Court, in deciding a quashing petition under Section 482 CrPC must consider whether the averment made in the complaint is sufficient or if some unimpeachable evidence has been brought on record which leads to the conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant

time. While the role of a Director in a company is ultimately a question of fact, and no fixed formula can be fixed for the same, the High Court must exercise its power under Section 482 CrPC when it is convinced, from the material on record, that allowing the proceedings to continue would be an abuse of process of the Court. [See Gunmala Sales (P) Ltd. v. Anu Mehta [Gunmala Sales (P) Ltd. v. Anu Mehta, (2015) 1 SCC 103 : (2015) 1 SCC (Civ) 433 : (2015) 1 SCC (Cri) 580].

10. A perusal of the record in the present case indicates that the appellant has specifically averred in his complaint that Respondents 1 and 2 were actively participating in the day-to-day affairs of Accused 1 company. Further, Accused 2 to 4 (including Respondents 1 and 2 herein) are alleged to be from the same family and running Accused 1 company together. The complaint also specifies that all the accused, in active connivance, mischievously and intentionally issued the cheques in favour of the appellant and later issued instructions to the bank to "stop payment". No evidence of unimpeachable quality has been brought on record by Respondents 1 and 2 to indicate that allowing the proceedings to continue would be an abuse of process of the court. "

(15) The principle dictums which have been laid down are that the complainant should specifically show as to how and in what manner, the accused was responsible. It had also been stated that simply because a person is a Director of a defaulter Company, it does not make him/her liable under the Act. It had also been stated that it is the person who was at the helm of affairs of the Company and in-charge of and responsible for the conduct of business at the time of the commission of the offence, will be liable for the criminal action.

(16) In the instant case, the petitioner had resigned from the post of Directorship on 01.12.2013 and the cheque was issued by the A1/Company on 31.12.2014, nearly after a year after the petitioner had resigned from the post of Directorship. The cheque was returned dishonoured on 21.02.2015.

(17) By no stretch of imagination, can petitioner be either liable for the issuance of the cheque or be the reason for its dishonour by the Bankers.

(18) In view of the above said principles laid down by the Apex Court and in view of the facts of the present case, the Criminal Original Petition stands allowed and the proceedings in CC.No.1910/2015 now pending on the file of the learned Metropolitan Magistrate, Fast Track Court-I, Egmore, Chennai, is quashed insofar as the petitioner/A3 is concerned.

(19) A direction is given to the learned Metropolitan Magistrate to proceed with CC.No.1910/2015 with respect to the other accused who will necessarily have to answer the charges levelled against them. It is to be mentioned that the reasons given in the present order would not accrue to the advantage of the other accused who stand on a different footing and will necessarily have to face trial owing to the cheque being issued and being dishonoured. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Metropolitan Magistrate,
   FTC-I, Egmore,
   Chennai.

2. The Public Prosecutor,
   High Court,
   Madras.

+1CC to M/s.Om Sai Ram, Advocate, Sr.No.10495

Crl.OP.No.21540/2015

SJ (CO)
K.RK. (26.11.2021)