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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.09.2021

PRONOUNCED ON: 17.09.2021

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

CrI.O.P.No. 30454 of 2015

And

M.P.No. 1 of 2015

1. Ramakrishnan Arvind
Director, MTK Textile Private Ltd.,
No.57, DPF Street, PN Palayam
Coimbatore - 641 037.
2. Subbian Meenakshi
Director, MTK Textile Private Limited
No.57, DPF Street, PN Palayam
Coimbatore 641 037.
3. Rajagopal Naidu Dhanalakshmi
Director, MTK Textile Private Limited
No.57, DPF Street, PN Palayam
Coimbatore 614 037.
4. Ramakrishna Indra
Director, MTK Textile Private Limited
No.57, DPF Street, PN Palayam
Coimbatore - 641 037.

...Petitioners/Accused
3, 5, 6, 7

Vs.

M/s. Shristi Cotspinn Private Limited.,
No. 9 Ramalinga Nagar, 4th Cross
Sai Baba Colony, Coimbatore - 641 011
Rep. by its authorised Signatory
M.S.Selvaraj

...Respondent/complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in S.T.C.No. 299 of 2015 on the file of Judicial Magistrate No.III, Coimbatore and quash the same.

For Petitioners : Mr. S.Ramachandran

For Respondent : Mr. R.Bharath Kumar



ORDER

This Criminal Original Petition has been filed by the accused Nos. 3, 5, 6 & 7 in S.T.C.No. 299 of 2015 pending on the file of the learned Judicial Magistrate No.III, Coimbatore, under Section 482 Cr.P.C., to call for the records and to quash the said S.T.C.No. 299 of 2015 as against them.

2. S.T.C.No. 299 of 2015 had been filed on a complaint given by the respondent alleging offences under Sections 138 and 141 of the Negotiable Instrument Act. The first petitioner/A3, the second petitioner/A5, the third petitioner/A6 and the fourth petitioner/A7 are all Directors of M/s. M.T.K. Textiles Pvt., Ltd., Coimbatore. It is claimed in the present petition that the allegations in the complaint against them are very vague and specific allegations have not been stated.

3. It is pointed out that in the complaint, it had been merely stated that the petitioners are Directors and are responsible for the day today administration and activities of the business transactions of the company M/s. M.T.K. Textiles Pvt., Ltd.

4. It is to be noted that two cheques bearing Nos. 860522 and 860523 both dated 01.11.2015 for Rs.5,00,000/- and Rs.4,90,000/- respectively had been drawn on Indian Overseas Bank, Park Square Branch, Avinashi Road, Coimbatore and issued by the first accused company, M/s. M.T.K. Textiles Pvt., Ltd., signed by A2 and A4 in favour of the respondent towards transactions which had occurred between the two companies. The two cheques were dishonoured on presentation. It had been further stated in the complaint that since the petitioners are Directors and they had not come forward to pay the amount, inspite of receipt of notice demanding payment, offences under Section 138 and 141 of the Negotiable Instrument Act are attracted not only against the petitioners but also against all the other accused.

5. In the petition seeking to quash further proceedings in S.T.C.No. 299 of 2015, it had been stated that the petitioners herein are not key Management Personal. A2 and A4 are the key Management Personal as reflected in the annual reports of the company. The petitioners did not also stand as guarantors for the loan transaction the first accused had with their bankers namely, Indian Overseas Bank, Park Square Branch, Avinashi Road, Coimbatore. They had also not received any remuneration or fee from the company since they never participated in any of the transactions of the company. They had also not taken part in the day today administrative activities. They were however Directors. They did not deal with any customers of the Company,



much less, the respondent Company. It had also been stated that they had also not signed the two cheques. They are also not shareholders of the first accused Company. It was therefore stated that S.T.C.No. 299 of 2015 pending on the file of the learned Judicial Magistrate No.III, Coimbatore, should be quashed in so far as the present petitioners/A3, A5, A6 & A7 are concerned.

6. Heard arguments advanced by Mr.S.Ramachandran, learned counsel for the petitioners and Mr.R.Bharath Kumar, learned counsel for the respondent.

7. Mr.S.Ramachandran, learned counsel took the Court through the facts as stated above.

8. The learned counsel then relied on the following Judgments:-

(i) 2007 (3) SCC 693 [Saroj Kumar Poddar Vs. State (NCT of Delhi) and Another] wherein 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."

(ii) 2010 (11) SCC 203 [Central Bank of India Vs. Asian Global Ltd., 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..."

(iii) 2011 (1) SCC 176 [Pepsico India Holdings Pvt. Ltd., Vs. Food Inspector and Another], wherein 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. "

(iv) 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] .)

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. "

9. Pointing out the ratio laid down in the above Judgments, Mr.S.Ramachandran stated that there are no allegations in the complaint that the petitioners have been directly involved either in the transactions with the respondent or directly involved in issuing the two cheques which had been dishonoured. The learned counsel therefore stated that S.T.C.No. 299 of 2015 will necessarily have to be quashed in so far as the present petitioners are concerned. The learned counsel also pointed out the complaint wherein it had merely been stated with respect to the present petitioners as follows:-

"The aforesaid cheques are signed by Accused Nos. 2 & 4 as managing director and director of the first accused. As aforesaid accused Nos. 2 to 7 are jointly in active management and day today activities of the 1st accused."

10. The learned counsel pointed out that specific allegation with respect to the role of the present petitioners had not been stated.

11. Mr. R.Bharat Kumar, learned counsel for the respondent however disputed that statement and pointed out that it is admitted that the petitioners are Directors of the first accused company. The learned counsel relied on a Judgment of the Hon'ble Supreme Court reported in AIR 2019 SCC 2518 [A.R.Radha Krishna Vs. Dasari Deepthi and Ors.]. In that case, 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,



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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. "

12. The learned counsel stated that the present petitioners had not paid the amount inspite of notice being issued and also pointed out that they being Directors of the company will necessarily have to answer the charges against them and their role can be brought out only during the course of trial. The learned counsel insisted that the petition should be dismissed.

13. I have carefully considered the arguments put forth by both the learned counsels.

14. In the complaint, it had been admitted that A2 and A4, as Managing Director and Director of the first accused Company had issued the two chequest bearing Nos. 860522 and 860523 for Rs.5,00,000/- and Rs.4,90,000/- respectively, both dated 01.11.2015 to the respondent and that both the cheques had been dishonoured when presented for payment. A notice dated 12.01.2015 had been issued by the respondent calling upon all the accused to pay the amount mentioned in the cheques. Since



there was no compliance, a complaint alleging offences under Sections 138 and 141 of the Negotiable Instrument Act was preferred before the competent jurisdictional Magistrate Court and which was taken cognizance as S.T.C.No. 299 of 2015 by the learned Judicial Magistrate No.III, Coimbatore.

15. In the complaint, it had been only stated that the present petitioners are jointly in active Management and day today activities of the first accused company.

16. However, along with this petition, the petitioners had filed the annual report of the first accused company for the financial year 2013-2014 and the details of the Director and the remuneration had been given wherein the present petitioners had not been shown as either Managing Director or Director, who received remuneration. It had also been stated that the key Management Personal are the Managing Director and Director, Gurusamy Rajkumar and Gurusamy Radhakrishnan, who are A2 and A4. The names of these petitioners are also not given in the list of relatives of the key Management Personal.

17. It is thus seen that the petitioners herein had never taken part in any of the administrative activities of the first accused company and they had never participated in the business transactions with the respondent or with any other party. They also did not stand as guarantors for the loans obtained by the first accused with the bankers. They merely remained as Directors. They were silent spectators. They never had any active role in the affairs of the Company.

18. Even in the Judgment relied on by Mr. R.Bharath Kumar, the Hon'ble Supreme Court had very specifically stated that the law requires that a complaint under Sections 138 and 141 of the Negotiable Instrument Act, 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.

19. In the instant case, there is no such averment that the petitioners were directly in charge of, or responsible for the conduct of the first accused at the time when the offence was committed. They had not signed the cheques. They also did not participate directly in the business transactions with the respondent. It is also not the case of the respondent that these petitioners directly participated in the business transactions with the respondent. It is also not the case of the respondent that these petitioners signed the cheques.



20. In view of these facts, applying the ratio laid down in all the Judgments above, that it is imperative that in a complaint, there must be specific averments that a Director was actually in charge of and responsible for the conduct of the company's business and since there are no such averments, I hold that allowing S.T.C.No. 299 of 2015 to continue as against these petitioners would be a travesty of justice. It is also seen that the third petitioner is aged 94 years and the fourth petition is aged 71 years.

21. In view of the above reasons, this Criminal Original Petition is allowed and S.T.C.No. 299 of 2015 is quashed in so far as the present petitioners/A3, A5, A6 and A7 are concerned. Consequently, connected Miscellaneous Petition is closed.

22. It is needless to point out that the reasons stated to quash the proceedings against the present petitioners would not accrue to the benefit of the A1, A2 and A4 and more particularly to A2 and A4, who, it is seen are in control of the day today activities of the first accused company as Managing Director and Director. They had also signed the two cheques involved in the transactions. Therefore I further hold that, S.T.C.No. 299 of 2015 should proceed against A1, A2 and A4.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsg

To

The Judicial Magistrate III,
Coimbatore.

+1cc to M/s.R.Bharath Kumar, Advocate, S.R.No.47451/21

CrI.O.P.No.30454 of 2015
And
M.P.No.1 of 2015

RLP(CO)
RGA(01/10/2021)