



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
15.09.2020

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.OP.NOS.22770 AND 22782 OF 2016

Rajesh Lodha

... Petitioner in both the
petitions

.Vs.

Mahaveer Traders,
Rep. By its Proprietor
Mr.Kantilal,
No.365, Mint Street,
Sowcarpet, Chennai-1.

... Respondent in both the
petitions

COMMON PRAYER:-

Criminal Original Petitions filed under Section 482 of Cr.P.C., to set aside the order dated 17.08.2016 passed by the learned VII Additional Sessions Judge, Chennai in Crl.RC.Nos.8 and 9 of 2016 confirming the order passed by the learned IV Fast Track Metropolitan Magistrate in Cr.M.P.Nos.8451 and 8509 of 2015 in CC.Nos.3472 and 4046 of 2013.

For Petitioner : Mr.Sunder Mohan

ORDER

These petitions have been filed by the petitioner, who has been arrayed as third accused, to set aside the order in C.C.Nos.3472 and 4046 of 2013 in Crl.MP.Nos.8451 and 8509 of 2015 passed by the file of the learned IV Fast Track Metropolitan Magistrate, Chennai dated 27.01.2016.

[For the sake of convenience, parties hereinafter will be referred as per their status in the CC before the trial Court.]

2. The Complainant is the respondent and the accused is the petitioner in the present criminal original petitions. The case of the complainant is that the accused 1 and 2 had borrowed a sum of Rs.36,00,000/- vide two cheques i.e. one for a sum of Rs.18,00,000/- and another one for a sum of Rs.18,00,000/- for their business purpose. When the complainant insisted the



accused 1 and 2 to repay of the same, the accused 1 and 2 issued a cheque and promissory note in favour of the complainant drawn on the HDFC Bank, bearing cheque Nos.516789, 516787, 516795 and 516796. When the said cheques were presented before the concerned bank for encashment on 27.06.2013 and 25.07.2013, it was returned with an endorsement "funds insufficient". Subsequently, the complainant issued a legal notice on 24.07.2013 & 19.08.2013 and the same were received by the accused 1 and 2 on 25.07.2013 and 22.08.2013. Despite receipt of the said notice, the accused neither repaid the amount nor given any reply to the notice. Therefore, the complainant filed a private complaint under Section 138 of the Negotiable Instruments Act, before the learned Metropolitan Magistrate, Chennai in C.C.Nos.3472 and 4046 of 2013.

3. During trial, the complainant filed a proof affidavit in support of his complaint. The specific averments in the complaint is that the second accused is the authorized signatory of first accused company and he had issued the cheques to discharge the liability. Before the trial Court, the complainant marked six documents to prove his case. During pendency of trial, the second accused died on 26.07.2015 and thereafter, the complainant, filed a petition under Section 319 of Cr.P.C. to add the present petitioner viz., Rajesh Lodha as accused, who is the authorized signatory of the company.

4. The accused filed a common counter before the trial Court. After hearing the arguments advanced by either side, the trial court allowed the petitions and arrayed the petitioner as third accused. Aggrieved against the said orders dated 27.01.2016 in Cril MP.Nos.8509 & 8451 of 2015 in CC.No.4046 & 3472 of 2013, the petitioner filed criminal revision before the VII Additional Sessions Court, Chennai in CrI.RC.Nos.8 and 9 of 2016. The learned Sessions Judge, by order dated 17.08.2016, dismissed the revision petitions and confirmed the findings of the trial court. Hence, the petitioner has come forward with the present criminal original petitions before this Court.

5. The contention of the complainant is that the complainant and the accused company initially were doing business and they were known to each other for a long time. During the course of the business, the first accused company had borrowed a loan, for which, the accused company issued a promissory note. After several request made by the complainant regarding for repayment of the loan, two cheques were issued to the complainant. When the cheques were presented for encashment, it was returned with an endorsement as "funds insufficient". Hence, the complainant issued a statutory notice to the accused and the same was received by accused 1 and 2. Despite receipt of the said notice, the accused neither repaid the amount nor given any reply to the



notice. Therefore, the complainant had filed a private complaint under Section 138 of Negotiable Instruments Act. After filing of the complaint, the complainant appeared before the trial Court and proof affidavit filed by him. On 26.07.2015, the second accused died. Thereafter, the complainant came to know that the petitioner/accused viz., Rajesh Lodha became Managing Director of the AI company. Hence, the complainant added Rajesh Lodha as an accused in this case. The petitioner filed a common counter before the trial Court and the trial Court, negated the contention of the accused and allowed the contention of the complainant. Against the order of the trial Court, the accused filed two revision petitions before the Sessions Court. The Sessions Court also rightly dismissed the revisions. Hence the learned counsel for the complainant prays to dismiss these petitions.

6. The learned counsel for the petitioner/accused submitted that the learned Sessions Judge without considering the materials confirmed the order of the trial court. The petitioner got appointed as Director on 23.11.2005 and the first transaction was made in the year 2004. Further to array a person as accused, certain conditions are prescribed before filing a case, which are mandatory. In this case, no such mandatory conditions followed. Hence, the petition to be allowed. The learned trial court failed to consider the above facts and erred in adding the petitioner as an accused. The learned counsel in order to substantiate his arguments relied upon the Judgments of the Hon'ble Supreme Court in the case of N.Harihara Krishna Vs. Thomas reported in 2008 (13) SCC 663 and also Harish Chand Pandey Vs. Roger Med reported in 2019 SCC online P&H 253. Hence, the learned counsel for the petitioner prays to allow these petitions.

7. Heard the learned counsel for the petitioner/accused and perused the materials available on record.

8. On the submissions and perusal of materials, it is seen that the present cases are covered by the Hon'ble Supreme Court order in the case of Harish chand pandey referred supra, which is extracted hereunder:

'In the present case, admittedly no notice was ever served upon the petitioner because he has been added as an accused only on an application filed under [Section 319 Cr.P.C.](#) Cause of action, thus, never arose in favour of the complainant so far as the petitioner is concerned and, thus, summoning him as an additional accused is illegal. Reference can be made with advantage to N. Harihara Krishna (supra). In that case, a person



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was sought to be summoned as an additional accused on an application filed under [Section 319 Cr.P.C.](#), as in the present case, which was allowed by the trial Court. The petition seeking quashing of the summoning order was dismissed by the High Court, which order was challenged before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court held as under:-

The offence under Section 138 is person specific. Therefore, the Parliament declared under Section 142 that the provisions dealing with taking cognizance contained in the [CrPC](#) should give way to the procedure prescribed under [Section 142](#). Hence the opening of non- obstante clause under [Section 142](#). ''

9. The case of the petitioner is covered by the ratio of the said judgment. Admittedly, in this case, no statutory and mandatory conditions followed and complied before filing of the complaint against the petitioner/accused. These conditions cannot be given a go by and petitioner cannot be added as accused at a later stage. In view of the above discussions, the order in C.C.Nos.3472 and 4046 of 2013 in CrI.MP.Nos.8451 and 8509 of 2015 passed by the learned IV Fast Track Metropolitan Magistrate, Chennai dated 27.01.2016 are hereby set aside and these criminal original petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The VII Additional Sessions Judge,
Chennai.
2. The IV Fast Track Metropolitan Magistrate,
Chennai.

+1cc to Mr.Sunder Mohan, Advocate, S.R.No.26994

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PP(CO)
PBS/12/08/2021