IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.Nos.5133, 5134, 5272, 6964, 6965, 6966 & 6967 of 2018
and
Crl.M.P.Nos.2550, 2551, 2552, 2553, 2609, 2610, 3584, 3585 3586, 3587, 3588, 3590 of 2018

1.A.Ashok Agarwal ...1st petitioner in all petitions
2.A.Anitha Agarwal

...2nd Petitioner in Crl.O.P.Nos.5133, 5134 & 5272 of 2018

Vs.

M/s.Shri Veeraganapathi Steels Pvt. Ltd.,
rep.by its Director,
Mr.Narayan Maheshwari.

... Respondent in all petitions

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.Nos.1918, 1919, 1564, 1565, 1567 & 1639 of 2016 on the file of the IV Fast Track Court, (Magistrate Level) at George Town, Chennai(in Crl.O.P.Nos.5133, 5134, 6964, 6965, 6966 & 6967 of 2018) respectively, C.C.No.372 of 2017, on the file of the VII Metropolitan Magistrate, George Town, Chennai (in Crl.O.P.No.5272 of 2018) and quash the same.

For Petitioners in all petitions : Mr.Sunder Mohan

For Respondent in all petitions : No appearance

COMMON ORDER

These petitions have been filed to call for the records in C.C.Nos.1918, 1919, 1564, 1565, 1567 & 1639 of 2016, on the file of the IV Fast Track Court, (Magistrate Level) at George Town, Chennai and C.C.No.372 of 2017, on the file of the VII Metropolitan Magistrate, George Town, Chennai and quash the same.

2. The case of the petitioners is that the petitioners are A2 and A4 and A2 is the Managing Director and A4 is the Director of the 1st accused Company. Admittedly, 3rd and 8th

accused are the authorised signatories, who are alleged to have signed the cheque on behalf of the 1st accused company. It is further averred that in the normal course of business transaction, the 3rd and 8th accused alleged to have issued certain cheques for varying amounts, drawn on Axis Bank, Chennai, to the complainant, the details of which are tabulated hereunder :-

S.No.	Cheque Nos.	Cheque dated	Cheque Amount
1.	018599	02.02.2016	Rs.75 lakhs
2.	018236	02.02.2016	Rs.61 lakhs
3.	570226	20.01.2016	Rs.10 lakhs
4.	570225	27.01.2016	Rs.10 lakhs
5.	570227	01.02.2016	Rs.10 lakhs
6.	570216	18.03.2016	Rs. 5 lakhs
7.	527798	24.03.2016	Rs.5 lakhs
8.	527799	30.03.2016	Rs. 5 lakhs
9.	527800	06.04.2016	Rs.5 lakhs
10.	570176	12.04.2016	Rs. 5 lakhs
11.	570177	18.04.2016	Rs. 5 lakhs
12.	570178	24.04.2016	Rs. 5 lakhs
13.	570179	30.04.2016	Rs. 5 lakhs
14.	570185	30.05.2016	Rs. 5 lakhs
15.	570181	06.05.2016	Rs. 5 lakhs
16.	570182	12.05.2016	Rs. 5 lakhs
17.	570183	18.05.2016	Rs. 5 lakhs
18.	570184	24.05.2016	Rs. 5 lakhs
19.	527795	06.03.2016	Rs. 5 lakhs
20.	527796	12.03.2016	Rs. 5 lakhs

3. It is further case of the petitioners that when the said cheques were presented for clearance, they were returned with endorsement ''Funds Insufficient''. After completing the legal formalities, the respondent complainant has filed the complaints in C.C.Nos.1918, 1919, 1564, 1565, 1567 & 1639 of 2016, on the file of the IV Fast Track Court, (Magistrate Level) at George Town, Chennai and C.C.No.372 of 2017, on the file of the VII Metropolitan Magistrate, George Town, Chennaiagainst the petitioners and other accused persons. Challenging the same, the present petitions are filed by the petitioners/A-2 and A-4.

4. The learned counsel appearing for the petitioners submitted that the petitioners were implicated on the sole ground that the petitioners were holding the post of Managing Director and Director of the 1st accused company and involved in the day to day administration of the Company. The authorized signatories are A3 and A8 and though the petitioners have not signed the above said instruments, they were implicated on the ground of vicarious liability. The learned counsel further submitted that the 1st petitioner resigned the post of Managing Director on 16.08.2014 and the second petitioner resigned the post of Director on 10.08.2015 and the same was intimated to the Registrar of Companies, vide Form 12, as contemplated under the Act and therefore, without verifying Form No.12, wherein it was mentioned about the resignation of posts by the petitioners, filing the present complaint against the petitioners is not justifiable. After their resignation, the petitioners have not participated in the day to day affairs of the Company and hence prays for quashment of the complaint.

5. The learned counsel appearing for the petitioners further averred that on an earlier occasion, the petitioners have filed the quash petition before this Court in Crl.O.P.Nos.25297 and 25300 of 2016, however the earlier petitions were dismissed as withdrawn, in view of the fact that the petitioners were not able to produce the Form No.12, which was subsequently obtained from the competent authority.

6. Though notice was served on the respondent, there is no representation on its behalf. This Court, taking into consideration the long pendency of this petition, is inclined to dispose of the case on merits.

7. The facts in the present case is not in dispute. The petitioners are not the authorised signatories of the instrument. The petitioners were implicated as A2 and A4 in the capacity of Managing Director and Director of the 1st accused Company, in the complaint and alleged to have involved in the day to day affairs of the Company. However the fact remains that the respective petitioners had resigned from the respective posts on 16.08.2014 and 10.08.2015 itself, which is evident from the Form 12, annexed in the typed set of papers. However, the instrument was issued only after their resignation on the dates, as shown above.

8. In the private complaint, the respondent complainant has specifically averred that the petitioners and other accused persons were actively engaged in the Management of the 1st accused company. Except this allegation, no other allegation was made against the petitioners. Further a reading of the relevant provision under the Negotiable Instrument Act, it is evident that the Director or Officer, who are not incharge for the conduct of the business can be made liable under Section 141 (2) of the Negotiable Instrument Act provided it is proved that the said act has received the consent of the said Director or Officer. There must be necessary averment in the complaint to show as to how and in what manner the accused had given consent or connived or had been negligent, leading to the commission of the offence. In the present case, the petitioners are the Managing Director and Director of the 1st accused Company and accused 3 and 8 are the authorized signatories of the A1 company. Merely because, the petitioners were the Managing Director and Director of A-1 company, they were implicated in the above said impugned complaint. Except for the aforesaid vague allegations in the complaint, no other averment has been made implicating the petitioners.

9. A perusal of the complaint reveals that the only averment made is that the petitioners along with other accused are engaged in the day-to-day affairs of the A1 Company. Such vague averments, without details as to how the petitioners herein, in their capacity as Managing Director and Director, had given consent or connived or were negligent in their acts have not been established by the respondent. Mere allegation without any material to substantiate the same would not be sufficient to attract the offence Section 138 of the Negotiable Instrument Act. Therefore, implicating the petitioners in the above said complaint is non-est in the eye of law.

10. Further, it is to be pointed out that on the date when the instrument was issued, the petitioners were no longer holding the post of Managing Director and Director of the company and had no involvement in the day to day affairs of the Company, as is evident from Form 12. On the said ground as well, the present petition is liable to succeed. Therefore, I have no hesitation to quash the complaint against the petitioners

11. For the reasons aforesaid, this Criminal Original Petitions are allowed and C.C.Nos. 1918, 1919,1564, 1565, 1567 & 1639 of 2016, on the file of the IV Fast Track Court,

(Magistrate Level) at George Town, Chennai and C.C.No.372 of 2017, on the file of the VII Metropolitan Magistrate, George Town, Chennai are quashed. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Fast Track Court,
   (Magistrate Level),
   George Town, Chennai.

2. The VII Metropolitan Magistrate,
   George Town, Chennai.

3. The Public Prosecutor,
   High Court, Madras.

+2cc to M/s.Sunder Mohan, Advocate Sr.38684, 38685

Crl.O.P.Nos.5133, 5134, 5272,
6964, 6965, 6966 & 6967 of 2018

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srg 07/10/2021