

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.No.8349 of 2018
and
Crl.M.P.Nos.4303 & 4304 of 2018

Mr.Manoj Rungta

.. Petitioner

Vs.

Mr.Arun Kumar Somani
Son of Sri Mahaveer Prasad Somani
Proprietor of M/s Shri Balaji Traders,
Having Place of Business at
No.12/18, East 2nd Street,
1st Floor Pethichettipuram,
Royapuram,
Tiruppur.

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.165 of 2016 on the file of Judicial Magistrate No.1 at Tiruppur and quash the same

For Petitioner : Mr.K.Myilsamy

For Respondent : Mr.B.A.Sujay Prasanna
for R.Aswin

ORDER

This petition has been filed to call for the records in C.C.No.165 of 2016 on the file of Judicial Magistrate No.1 at Tiruppur and quash the same.

2. The case of the prosecution is that the petitioner is A4, Director of A1 Company. He was implicated for the offence under Section 138 of the Negotiable Instrument Act in C.C.No.165 of 2016 at the instance of the respondent. Challenging the same, the present petition is filed

3. The learned counsel appearing for the petitioner submitted that the petitioner is the Director of the Company and he has resigned from the Company since 2015, immediately after the issuance of the Cheque and after his resignation he was not participated in the day to day affairs of the Company. Unless the signatory is implicating in the above said case, implicating the petitioner alone is not sustainable. Further, except vague allegations in paragraph nos.2 and 4 of the complaint, no other allegation was made against the petitioner and therefore, the complaint against the

petitioner is not maintainable and prays for allowing of the said petition.

4. The learned counsel appearing for the respondent submitted that the petitioner is A4 and the Director of the Company and allegation levelled against the petitioner in the complaint, particularly in paragraph nos.2 and 5, is that though they are not authorised signatory of the instrument, the petitioner and other accused are actively participated in the day to day affairs of the Management and thereby it satisfies the basic requirement of Section 141(1) of the Negotiable Instrument Act, wherein it is stated that if the person committing an offence under Section 138 is a Company, every person who at the time the offence was committed, was in charge of , shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

5. In support of his contention, the learned counsel appearing for the private respondent also placed reliance upon the decision of the Hon'ble Apex Court in the case reported in 2009 (10) SCC 48 (KK Ahuja Vs. VK Vohra) and it is relevant to extract paragraph nos.24 and 25 of the said

decision:

"24. Therefore, the averment in a complaint that an accused is a director and that he is in charge of and is responsible to the company for the conduct of the business of the company, duly affirmed in the sworn statement, may be sufficient for the purpose of issuing summons to him. But if the accused is not one of the persons who falls under the category of 'persons who are responsible to the company for the conduct of the business of the company' (listed in para 14 above), then merely by stating that 'he was in charge of the business of the company' or by stating that 'he was in charge of the day to day management of the company' or by stating that he was in charge of, and was responsible to the company for the conduct of the business of the company', he cannot be made vicariously liable under Section 141 of the Act.

25. It should, however, be kept in view that even an officer who was not in charge of and was responsible to the company for the conduct of the business of the company can be made liable under Sub Section (2) of Section 141. For making a person liable under Section 141(2), the mechanical repetition of the requirements under Section 141(1) will be of no assistance, but there should be necessary averments in the complaint as to how and in what manner the accused was

guilty of consent and connivance or negligence and therefore, responsible under Sub-section (2) of Section 141 of the Act."
and prays for dismissal of this petition.

6. This Court has carefully considered the rival submissions and also perused the available materials, particularly, the private complaint lodged by the respondent.

7. The facts in the present case is not in dispute that the petitioner is not the authorised signatory of the instrument and he was the Director of the A1 Company. In the private complaint, the respondent has specifically averred that the petitioner and other accused persons were actively engaged in the Management of the 1st accused, except this allegation, no other allegation was made against the petitioner. Further reading of the provision reveals that if an officer either 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. However there must be necessary averment in the complaint. In the present case, the petitioner is the Director of the Company and accused 2 to 4 are also Directors and Accused 5 to 7 are

various signatories of the A1 company. In the capacity of Director, the petitioner was implicated in the above said impugned complaint. However except vague allegations in paragraph no.3, no other averment has been made implicating the petitioner. Further the decision of the Hon'ble Apex Court makes it clear that there should be averment in the complaint as to how and in what matter the accused was guilty of consent and connivance or negligence and therefore, responsible under Sub-section (2) of Section 141 of the Act.

8. A perusal of the complaint, the only averment made is that the petitioner along with other Directors are engaged in the day-to-day affairs of the A1 Company. Such vague averments, without details as to how the petitioner herein, in his capacity as Director, was liable for the cause of action for filing the complaint, may not be sufficient to attract the offence Section 138 of the Negotiable Instrument Act. Hence this Court is inclined to quash the complaint.

9. For the reasons aforesaid, this Criminal Original Petition is allowed and C.C.No.165 of 2016, on the file of the Judicial Magistrate

NO.I, Tiruppur, is quashed. Consequently connected miscellaneous petition is closed.

26.07.2021

Speaking/Non Speaking order

Index : Yes/No

Internet: Yes/No

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To

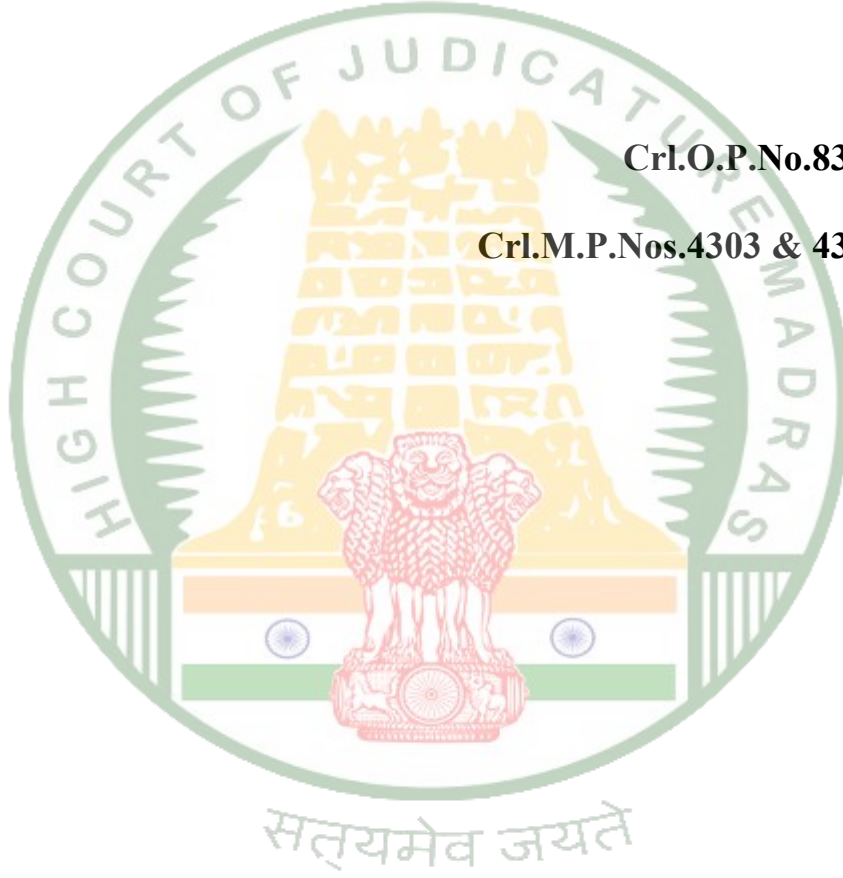
1. The Judicial Magistrate No.1 at Tiruppur.
2. The Public Prosecutor,
High Court, Madras.



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M.DHANDAPANI,J.

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