

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :25.06.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Crl.O.P.No.7761 of 2016
and
Crl MP No.4045 of 2016

P.Elango

...Petitioners /
Accused No. 4

Vs.

P.Rajkumar

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.513 of 2002 on the file of the learned Judicial Magistrate No.1, Salem, and quash the same insofar as the petitioner is concerned by allowing this quash petition.

For Petitioner	: Mr.N.Manokaran
For Respondent	: No appearance

ORDER

This Criminal Original petition has been filed to quash the proceedings pending in C.C.No.513 of 2002 on the file of the learned Judicial Magistrate No.1, Salem insofar as the petitioner is concerned.

2. The facts leading to filing of this Criminal Original petition are briefly narrated as follows :-

(a) The averments made in the complaint would disclose that the first accused is a limited company, the second accused Managing Director represents the first accused and also himself. Third and Fourth accused are the other directors of the company and all of them are the vital nerves for running the first accused company and each accused is actively, physically and

mentally taking part in the running of the first accused company.

The petitioner herein is the 4th accused.

(b) The defacto complaint preferred a private complaint dated 23.03.2002 before the learned Judicial Magistrate I, Salem against the petitioner and three others for an offence under Sections 138 and 142 of the Negotiable instruments Act, alleging that he along with other accused persons had borrowed loan for a sum of Rs.3,00,000/- for business purpose and issued a cheque No.29264 dated 2.08.2001. When it was presented for collection on 08.01.2002, it has been returned unpaid with an endorsement as "Account closed" on 08.02.2002. The case was tried in C.C.No.513 of 2002 along with C.M.P.No.3940 of 2014 in C.C.No.3940 of 2014.

(c) The 3rd accused in this proceedings had filed a Crl.OP No.8895 of 2007 before this Court seeking to quash the

proceedings against him and obtained an order on 18.02.2009. Since, the 4th accused/ petitioner herein, who is also a Director of the Company and is on the similar footings as that of the 3rd accused, has filed the case before the Court below.

(d) The Court below without gone into the merits of the case had dismissed the C.M.P.No.3940 of 2014 in C.C.No.3940 of 2014 on the ground that Section 258 of Cr.PC has no application to the private complaint. Aggrieved by the same, the petitioner filed this Criminal original petition before this Court seeking to quash the proceedings pending against him.

3. The learned counsel for the petitioner submitted that the petitioner is also entitled for the similar relief granted by this Court to the 3rd accused vide order dated 18.02.2009. The learned counsel further submitted that the Court below did not take into consideration the merits of the matter and had

dismissed the petition on the ground that Section 258 Cr.PC has no application to the private complaint.

4. This Court has already quashed the proceedings vide order dated 18.02.2009 in so far as the 3rd accused is concerned and it will be relevant to extract the order hereunder :-

4. A perusal of the complaint would disclose that the first accused company for its business purpose had availed loan from the respondent and it is not clear as to which accused had issued the cheque bearing No.292674 dated 25.08.2001. Though the averments made in the complaint would disclose that the said cheque was given to the respondent / complainant by all the accused, it is not made clear as to which accused had signed the cheque.

5. Except vague averments that the accused Nos.2 to 4 are vital nerves for running the first accused company and that each of them is actively, physically and mentally taking part in running of the business affairs of the first accused company, no averments have been available as to the part taken by the petitioner / third accused.

6. Under Section 141 of the Negotiable Instruments Act, a Director does not automatically become vicariously liable for the complaint that the person proceeding against was in-charge of, and was responsible to the company for the conduct of the business of the company and those two requirements laid down under Section 141, have to be read conjointly and not distinctively. Some averments that the third and fourth accused along with accused No.2 had played vital part in running the first accused

company and that they actually took part in the running of the business are all no consequence. The averments made in the complaint did not satisfy the statutory requirements under Section 141 of the Negotiable instruments Act in relation to the petitioner/Accused No.3.

7. This Court is of the considered opinion that the proceedings against the petitioner / third accused if allowed to continue, would definitely in miscarriage of justice.

8. Hence, this Criminal Original petition is allowed and the complaint in C.C.No.513 of 2003 insofar as the petitioner/third accused is quashed.

5. This Court has carefully considered the submissions made by the learned counsel for the petitioner and also perused the materials placed before it.

6. It is an admitted case of the petitioner that the petitioner herein is the Accused No.4 and he is also a director of the company along with Accused No.3, against whom the proceedings has already been quashed by this Court in Criminal Original petition on the ground that the said cheque was given to the respondent complainant by all the accused and it is not made clear as to which accused has signed the cheque and there is no material to prove the same. The petitioner herein is also placed on equal footing as that of the petitioner in the above Criminal Original petition and this Court having already quashed the proceedings insofar as the 3rd accused, the present petitioner is also entitled for the similar relief on the reasoning given by this Court in Crl OP No.8895 of 2007.

7. For the aforesaid reasons, the proceedings pending in

C.C.No.513 of 2002 on the file of the learned Judicial Magistrate No.1, Salem, is hereby quashed only insofar as the 4th accused and this Criminal Original petition is accordingly allowed. Consequently, the connected miscellaneous petition is closed.

....06.2021

Index : Yes / No

Speaking order/Non-speaking order

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To

1. The Judicial Magistrate Court, Salem.
2. The Additional Public Prosecutor,
High Court of Madras,
Chennai.

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