IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

CORAM:

THE HON'BLE MR.JUSTICE V. BHARATHIDASAN

CRL.O.P.No.16735 of 2016
and
Crl.M.P.No.8087 of 2016

1. M. S.Vijayakumar
2. D. Geetha
3. Sasikala ... Petitioners

Versus

T.C.Jegannathan ... Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the entire records in respect of the complaint filed in C.c.No.175 of 2015 on the file of the Judicial Magitrate Court, Gudiyatham and quash the same.

For Petitioners : Mr. D. Rajagopal

For Respondent : Mr. V.M.G. Ramakkannan

: Mr. V.Parthiban, Amicus Curaie

ORDER

This Criminal Original Petition has been filed by the petitioners, A4, A7 and A8, to quash the complaint filed under Section 138 of Negotiable Instruments Act in C.C.No.175 of 2015 on the file of the Judicial Magistrate Court, Gudiyatharm.

2. The case of the respondent/complainant before the Trial Court is that, the accused is a partnership firm, dealing in hiring automobiles. On behalf of the firm, A2 and A3 borrowed a sum of Rs.6 lakhs from the respondent/Complainant and agreed to repay the said amount together with interest at the rate of 24% per annum and also executed a promissory note on the very same day. On 17.08.2015, to discharge the above said legal liability, on behalf of the Firm, A1 and A2 issued a cheque for a sum of Rs.7,50,000/-drawn on Federal Bank, Gudiyttam Branch. When the above cheque was presented for collection through his bank, it was returned on the ground that, "Account Closed". Thereafter, the complainant issued a legal notice to the accused

demanding money, for which, a reply was given by the accused making baseless allegations, and failed to repay the due amount. Hence, the complaint has been filed. The learned Judicial Magistrate, Gudiyatham, taken cognizance of the offence under Section 138 of Negotiable Instruments Act and issued summons to the accused. Now, to quash the proceedings, A4, A7 and A8 are before this Court with the Criminal Original Petition.

3. Mr. D.Rajagopal, learned counsel appearing for the petitioners would submit that, though the loan alleged to have been received on behalf of the Partnership Firm, the partnership firm was not made as an accused, only the partners were made as accused and hence, the complaint is not maintainable. That apart, the petitioners herein are the sleeping partners of the Firm and they are not in charge of the day to day affairs of the firm, and they are not signatories in the disputed cheque. Admittedly, A2 and A3 alone issued the cheque on behalf of the Firm. Hence, the petitioners cannot be made as accused and criminal proceedings can not be initiated against them. He would further submit that there is no specific averments regarding the role played by the petitioners in the day to day activity of the firm, mere re-production of Section 141 of the Negotiable Instruments Act, in the complaint, is not sufficient and no cognizance could be taken as against the petitioners. In support of his contention, the learned counsel relied upon following judgments:

1. 2010(3) SCC 330 (National Small Industries Corporation Ltd/ vs/ Harmeet Singh Paintal and another)

2. 2012 (1) SCC 520 (Anita Malhotra /vs/ Apparel Export Promotion Council)

3. 007 (4) CTC 318 (Capt. D. karunakar, Director M/s. Manito Electronics Pvt Ltd., & others /vs/ Tamil Nadu NEs Print & Papers Ltd)

4. 2004(7) SCC 15. (Monaben Ketanbhai Shah and another /vs/ State of Gujarat and others)

4. Per contra, the learned counsel appearing for the respondent would submit that, admittedly, the accused are partners of the Partnership Firm, and the loan has been availed by them on behalf of the Firm, issued the cheque in the name of the Firm. But, failed to honour the cheque and with a malafide intention, the accused have closed the Bank account. After complying all the legal requirements, complaint has been filed. The learned Judicial Magistrate, after considering the entire materials, rightly, taken cognizance of the offence and there is no error in it.

5. The learned counsel would further submit that the Firm was also made an accused along with it partners and it is not correct to say that the partnership firm is not made as an accused. That apart, in paragraph 6 of the complaint, he has been specifically stated that all the accused are partners of the Firm, and all of them are in charge of and responsible to the Firm for the conduct of the business and they are also liable to pay the amount due to the complainant. He would further submit that it is not necessary for the complainant to aver each and every role played by the partners. Since it is a partnership firm, all the partners are deemed to have committed the offence, as per Section 141 of the Negotiable Instruments Act. In support of his contention, the learned counsel relying upon the judgment of the Hon'ble Supreme Court of India in Crl.A.No.1206 of 2021 in the case of Ashutosh Ashok Parasrampuriya & another /vs/ M/s.Gharrkul Industries Pvt. Ltd., & Others.

6. Heard Mr. V. Parthiban, learned counsel, who was appointed as Amicus Curiae to assist this Court.

7. The primordial contention of the learned counsel for the petitioners is that, mere averment in the complaint that all the partners were in charge of and responsible for the affairs of the Firm is not enough and there should be a specific averment in the complaint with regard to the respective role played by each of the partners in the business. Mere reproduction of Section 141 of the Negotiable Instruments Act in the complaint is not sufficient and based on the vague allegations, no cognizance can be taken against the petitioners.

8. At this stage, it is useful to refer Section 141 of Negotiable Instruments Act. Section 141 of N.I. Act, which reads as follows :

> Defence which may not be allowed in any prosecution under section 138.
> 141.(1) Offences by companies.
>
> 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, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
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> Provided that nothing contained in this sub-section shall render any person liable to

punishment if he proves that the offence Was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly,

Explanation.-For the purposes of this section,-

(a)"company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Under Section 141 of the Negotiable Instruments Act, the Company includes a Firm, and a Director, in relation to firm means a partner in the Firm. In such circumstances, Section 141 of Negotiable Instruments Act is equally applicable to the Partnership Firm also.

9. Now, the question is, whether mere averment in the complaint, that all the partners are incharge of and responsible to the affairs of the day to day conduct of the partnership firm at the time of issuance of cheque is sufficient to prosecute the partners of the firm, in absence of any specific averments regarding the respective role played by each partners.

10. The essential requirements of Section 141 of Negotiable Instruments Act, is that, the complainant should specifically aver in the complaint that, at the time of offence was committed, the accused was in charge of and responsible for the conduct of the business of the Company/Firm and the specific role played by each of the directors/partners need to be stated in the complaint. In a judgment, reported in 2005(8) SCC 89, in the case of S.M.S. Pharmaceuticals Ltd., /vs/ Neeta Bhalla and another, the Hon'ble Supreme Court has held as follows :-

21. After so stating, the Court analysed Section 141 of the NI Act and after referring to

certain other authorities answered a reference, which reads as follows:-

> 19.(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the Company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.
>
> (b) The answer to the question posed in Sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.
>
> (c) The answer to question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is

concerned, he is clearly responsible for the incriminating and will be covered under Sub Section (2) of Section 141."

11. Recently, in Ashutosh Ashok Parasrampuriya & another /vs/ Gharrkul Industries Pvt. Ltd & others in Crl.A.No.1206 of 2021, the Hon'ble Supreme Court has held as follows :-

> ......23. In the light of the ratio in S.M.S. Pharmaceuticals Ltd.(supra) and later judgments of which a reference has been made what is to be looked into is whether in the complaint, in addition to asserting that the appellants are the Directors of the Company and they are incharge of and responsible to the Company for the conduct of the business of the Company and if statutory compliance of Section 141 of the NI Act has been made, it may not open for the High Court to interfere Under Section 482 CrPC unless it comes across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of Court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the particular Director for which there could be various reasons."

12. In the instant case, in para 6 of the complaint, it is stated that at the time of committing the offence, all the accused are partners and incharge of and responsible to the day to day affairs of the Firm, which reads as follows:

> "6. The Complainant submits that at the time of availing of the loan by the Accused No.1 & 2 on behalf of the firm and while issuing the cheque on behalf of the firm all the accused are partners of the Firm and all of them are in charge of and is responsible to the Firm for the conduct of the business and shall be deemed to be liable to pay the amount due to the complainant. "

Which in the considered view this Court is sufficient to satisfy the requirements under Section 141 of the Act .

13. There is a specific averment in the complaint that as the petitioners were actively participated in the day to day affairs of the company, they are responsible persons for the

conduct of the business of the company, and they are also deemed to be committed the offence as per Section 141 of the Negotiable Instruments Act. It is for the petitioners to establish before the trial Court that they are not incharge of the day to day affairs of the company. In those circumstances, the judgments relied upon by the counsel for the petitioners, in support of his contention, are not relevant to the facts of this case.

14. The next contention of the petitioners is that the Partnership Firm is not made as an accused. From the perusal of the complaint, it is seen that the partnership firm, namely, Sri Anumantha Auto Finance, was made an accused represented by its partners. Hence, it cannot be held that the Partnership Firm was not made as an accused in this case.

15. Considering all the above aspects, this Court is of the considered view that the trial Court, after considering all the materials available on record, has rightly taken cognizance and issued summons to the accused. Therefore, this Court finds no merit in this petition and the same is liable to be dismissed.

16. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mrp

To

The Judicial Magistrate,
Gudiyatham.

+1cc to Mr. D. Rajagopal, Advocate, S.R.No.64960

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CP(CO)
CT 28/01/2022