IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.No.7312 of 2014
and
CRL.M.P.No.1 of 2014

M/s.MUV Multitech (P) Ltd.,
Represented by its Manager,
No.3, III Floor, TAAS Mahal,
No.10, Monteith Road,
Egmore, Chennai- 600 008. ... Petitioner

Vs.

M/s.TTK Health Care Limited,
Rep. by its Manager, Mr.M.Arumugam,
Printing Division,
No.328, G.S.T. Road, Egmore,
Chennai - 600 008. ... Respondent

Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records relating to C.C.No.21436 of 2005 on the file of the Metropolitan Magistrate, Fast Track Court - I, Egmore, Chennai-8 and quash the same.

For Petitioner : Mr.S.Vijayakumari Natarajan

For Respondent : Mr.Prasad Vijaya Kumar

ORDER

This Criminal Original Petition has been filed to call for the records relating to C.C.No.21436 of 2005 on the file of the Metropolitan Magistrate, Fast Track Court - I, Egmore, Chennai-8 and quash the same.

2. The respondent has filed a complaint against the petitioner in C.C.No.21436 of 2005 on the file of the Metropolitan Magistrate, Fast Track Court - I, Egmore, Chennai-8, for the offence under Section 138 of the Negotiable Instrument Act.

3. The respondent / complainant has averred in the complaint that the petitioner / accused has been dealing with the respondent from the month of April 2003 for printing of

his bi-monthly magazine “Animation Reporter”. The respondent printed the magazine and supplied to the petitioner on time as per the clause mentioned in his purchase order and sent bills to him. For the bills raised in the Month of April 2003, the petitioner made payments on various dates and completed paying the amount for the bill of April 2003, only by the end of August 2003. The petitioner issued a cheque dated 02.09.2003 for Rs.2,16,150/- and another cheque dated 25.02.2004 for Rs.75,000/-, which were dishonoured on the ground of “insufficient funds”. When the respondent informed the petitioner about the same, the petitioner promised to give cheques of current date to the value of the dishonoured cheques, which the petitioner did not honour. On 26.02.2004, the petitioner sent an e-mail to the respondent that due to their revenues being staggered, there was delay in payment to the respondent and assured that, future payments will be on time. Believing the petitioner, the respondent continued to work for him. The respondent had written to the petitioner on 27.02.2004 giving a statement of accounts and also the amounts payable as on 27.02.2004 is Rs.7,57,591/-. When the respondent's Marketing Executive called on the petitioner on 27.02.2004, the petitioner promised that he would give the cheques for the above values and hence, the respondent printed his magazine in the month of February 2004 also. But the petitioner did not give the cheques mentioned above and finally gave the cheque for only Rs.1,93,778/- vide Cheque No.122799 dated 26.04.2004. Whenever the respondent has been calling the petitioner or when the respondent's Marketing Executive visited his office, either he has been promising payments, which he did not honour or he was giving only evasive replies.

4. It was further averred in the complaint that the petitioner / accused had given a cheque bearing No.122762 dated 02.11.2003 drawn on Global Trust Bank, Kilpauk Branch, Chennai-10, for a sum of Rs.2,14,550/-, which was dishonoured, but the petitioner instructed the respondent to redeposit the same. The respondent represented the cheque on 24.03.2004 at Canara Bank, Pallavaram and the same was returned on 25.03.2004 and received by the respondent on 26.03.2004 with an endorsement “Refer to Drawer”. The respondent issued a legal notice on 05.04.2004 which was acknowledged by the petitioner. Thereafter, the respondent has filed a complaint against the petitioner under Section 138 of the Negotiable Instruments Act, before the II Metropolitan Magistrate Court at Egmore. Subsequently, the cheque bearing No.122799 dated 26.04.2004 drawn on Global Trust Bank, Kilpauk Branch, Chennai-10, for a sum of Rs.1,93,778/-, was presented on 26.04.2004 at Canara Bank, Pallavaram and the same was dishonoured on 27.04.2004 with an endorsement “Refer to Drawer”. The respondent caused a lawyer's notice to be issued the petitioner on 06.05.2004 through registered post, which was acknowledged by the petitioner on 08.05.2004, in which, the respondent had stated that if the petitioner did not pay

the cheques amount within 15 days from the date of receipt of the notice, appropriate legal action would be taken under Section 138 of the Negotiable Instrument Act. In spite of the said notice, the petitioner has not come forward to settle the above said amount and hence, he should be punished under the law.

5. The complaint preferred by the respondent is still pending on the file of the Metropolitan Magistrate, Fast Track Court - I, Egmore, Chennai-8. Aggrieved by the same, the petitioner has filed this Writ Petition before this Court, stating that the summons dated 07.02.2013 issued in the above case was addressed to M/s.MUV Multitech (P) Ltd, but it was served to the residential address of one Hitesh V. Shah stating as if he is the Director. The complaint has been initiated against M/s.MUV Multitech (P) Ltd. Represented by its Manager without naming anybody. Since the summons were handed over to the company, the present manager Mr.Sanjay appeared before the Trial Court on 25.04.2013 and filed vakalat for the company.

6. It is also stated in the petition that the complaint in C.C.No.21434 of 2005 was filed for the dishonour of Cheques given by the petitioner on various dates for the services rendered by the respondent in printing his magazines. In the said complaint, it has been only stated that the cheques given by the petitioner were dishonoured, and nothing has been stated as to who has signed the cheques. Originally, the name of the company alone was there in the complaint, and only after the appearance of Mr.Sanjay on behalf of the company, the cause title was corrected as the company represented by its manager Mr.Sanjay. But no statutory notice was given to the manager Mr.Sanjay nor summons were issued on him on behalf of the petitioner company. The Sanjay is only an employee of the petitioner and he has not signed the cheques mentioned above. The complaint against Mr.Sanjay is beyond the period of limitation, and by the time when his name was added as accused, the limitation period was over. Hence, the complaint against him is not maintainable under the law.

7. The respondent / complainant has filed a counter affidavit denying all the averments made in the petition, wherein, it is stated that the petitioner company were evading service of notice on them till the Court was able to serve the summons to Mr.Hitesh V.Shah, Director of the Company in 2013 and then vakalat was filed by Mr.Sanjay, Manager of the Company. Further, it is stated that the person who signed the cheque his name is not clear and hence the respondent is not in the position to mention the name of the person who has signed the cheque and thereby sent the demand notice to the address of the company. Section 141 of the Negotiable Instrument Act contemplates 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, 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 ”. Hence, the person who is in charge of the company and day to day affairs of the business of the company will be deemed to be guilty of the offence committed by the company. And the burden of proof lies on the person to prove that the offence is committed without his knowledge or he took due diligence to prevent the offence.

8. It is further stated in the counter affidavit that the petitioner nowhere in the petition disputed the cheque or amounts to be paid to the respondent and also he is not denied that Hitesh V. Shah is the Director of the Company. The petitioner has stated in his petition that the complaint was filed on 21.12.2005, which is the blatant falsehood. The complaint was filed in June 2004 and got numbered in 2005, this does not mean that the complaint was filed beyond the period of limitation. The petitioner in order to evade summon was shifting his business from place to place, and every time when the respondent tried to go to the petitioner company, either it would be shifted or closed. The petitioner went into hiding and it was really very difficult to trace them and finally, the respondent found the address of the Director and served the summon to him. The name of the person who signed the cheque is not clear and the respondent does not know who was really in charge of the affairs of the company at the time of issuance of the cheques and therefore they made the manager of the company as accused in the complaint.

9. Heard the learned counsel for the petitioner and the learned counsel for the respondent, and perused the materials available on record.

10. On perusal of the records, it is seen that the petitioner / accused is a private limited company, which has been dealing with the respondent from the month of April 2003 for printing its bi-monthly magazine called “Animation Reporter”. The respondent has issued bills to the petitioner for the services rendered by them and the petitioner also issued a cheque dated 02.09.2003 for Rs.2,16,150/- and another cheque dated 25.02.2004 for Rs.75,000/- to the respondent. When the respondent has presented the cheques, the same were dishonoured as “insufficient funds”. Hence, the respondent has informed the petitioner about the same. Thereafter, the petitioner has issued a cheque dated 26.04.2004 for Rs.1,93,778/- to the respondent, which was presented on 26.04.2004, but the same was dishonoured on 27.04.2004 with the endorsement “Refer to Drawer”. In the interregnum, the respondent has presented the cheque dated 02.11.2003 and the same was returned on 25.03.2004 with the endorsement “Refer to Drawer. Hence, the respondent has issued a legal notice on 05.04.2004. In spite of the said legal notice, the petitioner has not come forward to settle the dues. Hence, the respondent

has filed a complaint against the petitioner in C.C.No.21436 of 2005 on the file of the Metropolitan Magistrate, Fast Track Court - I, Egmore, Chennai-8. Aggrieved by the said complaint, the petitioner has filed this Writ Petition before this Court.

11. The main contention of the learned counsel for the petitioner is that the Manager, who is in charge of the petitioner company, was not issued individual statutory notice under Section 138 and hence, he is not responsible for the alleged dishonour of cheques. In support of the said contention, the learned counsel for the petitioner has placed reliance on the Judgment of this Court in Dilip S. Dhanukar Vs. India Equipment Leasing Ltd., wherein, this Hon'ble Court has held as follows :

> "14. A contention has been raised by the petitioner that he is only the Chairman of the first accused company and not the Managing Director, whereas, in the complaints, it has been specifically stated that he is the Chairman cum Managing Director and therefore this disputed question cannot be gone into in a Criminal Original Petition. But even assuming that he is the Chairman cum Managing Director of the first accused company, in the light of the Division Bench decision reported in (2006) 2 MLJ (Crl) 990 (referred to supra), it has to be held that in the absence of statutory notice addressed to the petitioner individually the notice sent to the company will not amount to the individual notice to the petitioner and therefore the contention of the learned counsel for the petitioner has to be countenanced."

12. Rebutting the said contention, the learned counsel for the respondent has submitted that Section 138 does not contemplate issuance of separate notices to the managers and therefore, no such notices are required to be issued to the managers of the petitioner company. In support the said submission, the learned counsel for the respondent has relied upon the Judgment of Hon'ble Supreme Court in Kirshna Texport and Capital Markets Limited Vs. ILA.A.Agrawal and Others, wherein, the Hon'ble Supreme Court has held as follows :

> "16. Section 141 states that if the person committing an offence under Section 138 is a Company, every director of such Company who was in charge of and responsible to that Company for conduct of its business shall also be deemed to be guilty. The reason for creating vicarious liability is plainly that a juristic entity i.e. a Company would be run by living persons who are in charge of its affairs and who guide the actions of that Company and that if such juristic entity is guilty, those who were so responsible for its affairs and who guided actions of such juristic entity must be

held responsible and ought to be proceeded against. Section 141 again does not lay down any requirement that in such eventuality the directors must individually be issued separate notices under Section 138. The persons who are in charge of the affairs of the Company and running its affairs must naturally be aware of the notice of demand under Section 138 of the Act issued to such Company. It is precisely for this reason that no notice is additionally contemplated to be given to such directors. The opportunity to the drawer Company is considered good enough for those who are in charge of the affairs of such Company. If it is their case that the offence was committed without their knowledge or that they had exercised due diligence to prevent such commission, it would be a matter of defence to be considered at the appropriate stage in the trial and certainly not at the stage of notice under Section 138.

17. If the requirement that such individual notices to the directors must additionally be given is read into the concerned provisions, it will not only be against the plain meaning and construction of the provision but will make the remedy under Section 138 wholly cumbersome. In a given case the ordinary lapse or negligence on part of the Company could easily be rectified and amends could be made upon receipt of a notice under Section 138 by the Company. It would be unnecessary at that point to issue notices to all the directors, whose names the payee may not even be aware of at that stage. Under Second proviso to Section 138, the notice of demand has to be made within 30 days of the dishonour of cheque and the third proviso gives 15 days time to the drawer to make the payment of the amount and escape the penal consequences. Under clause (a) of Section 142, the complaint must be filed within one month of the date on which the cause of action arises under the third proviso to Section 138. Thus a complaint can be filed within the aggregate period of seventy five days from the dishonour, by which time a complainant can gather requisite information as regards names and other details as to who were in charge of and how they were responsible for the affairs of the Company. But if we accept the logic that has weighed with the High Court in the present case, such period gets reduced to 30 days only. Furthermore, unlike proviso to clause (b) of Section 142 of the Act, such period is non-extendable. The summary remedy created for the benefit of a drawee of a dishonoured cheque will thus be rendered completely cumbersome and capable of getting frustrated.

18. In our view, Section 138 of the Act does not admit of any necessity or scope for reading into it the requirement that the directors of the Company in question must also be issued individual notices under Section 138 of the Act. Such directors who are in charge of affairs of the Company and responsible for the affairs of the Company would be aware of the receipt of notice by the Company under Section 138. Therefore neither on literal construction nor on the touchstone of purposive construction such requirement could or ought to be read into Section 138 of the Act.”

13. Now it has to be seen as to whether the contention put forth by the learned counsel for the petitioner on the basis of the decision relied upon by him is sustainable.

14. At the outset, it has to be pointed out that after the complaint was filed under Section 138 of the Negotiable Instruments Act, on 07.02.2013, the Metropolitan Magistrate at Chennai, issued summon to one Hitesh V. Shah, who was the Director of the petitioner company. On receipt of the summon, one Sanjay, who is the Manager of the petitioner company, entered appearance before the Court below and copies were served to him.

15. The contention raised by the learned counsel for the petitioner that the present Manager of the petitioner company was not issued individual statutory notice under Section 138, cannot be countenanced for the reason that, in the decision relied on by the learned counsel for the respondent, the Hon'ble Supreme Court has specifically held that if the person committing an offence under Section 138 is a company, every Director of such company who was in charge of that company for conduct of its business shall be deemed to be guilty. Further, the Hon'ble Supreme Court has held that the persons who are in charge of the affairs of the company must naturally be aware of the demand notice issued to the company. Hence, no separate notice is required to be given to such persons. Moreover, it has been held by the Hon'ble Supreme Court that if the contention of the accused is that the offence was committed without their knowledge or that they had exercised due diligence to prevent such commission, the same would be considered only at the time of trial and not at the stage of notice under Section 138.

16. Admittedly, in this case, the liability of the petitioner company has not been discharged and also it is not denied that Mr.Hitesh V. Shah is the Director of the company. The Manager, who is in charge of the petitioner company, has entered appearance before the Court below only on receipt of the summon issued to the Director Mr. Hitesh V. Shah and hence, no separate notice is required to be issued to him

under Section 138 of the Act. Hence, this Court is of the view that the complaint in C.C.No.21436 of 2005 on the file of the Metropolitan Magistrate, Fast Track Court - I, Egmore, Chennai-8, shall be proceeded before the Trial Court.

17. Since the matter is of the year 2003, the Magistrate is hereby directed to complete the trial within a period of six months from the date of receipt of a copy of this order. The petitioner is at liberty to produce all the documents they rely upon to prove their case.

18. In view of the above, this Criminal Original Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The Metropolitan Magistrate, Fast Track Court - I,
Egmore, Chennai-8.

2.-do- through The Chief Metropolitan Magistrate,
Egmore, Chennai-8.

+1cc to Mr.Prasad Vijayakumar, Advocate SR. No.58103

CRL.O.P.No.7312 of 2014
and
CRL.M.P.No.1 of 2014

PCH (CO)
PR (30/11/2021)