

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.02.2021
CORAM
THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH
Crl.O.P No.21341 of 2019
&
Crl.M.P.No.11041 of 2019

1. Paulraj Jayalakshmi,
W/o.Paulraj

2. Chandara Ram Rao,
D/o.Rama Rao

3.Hasanmohammed Fathemohammed
S/o.Hasanmohammed
Additional Director of M/s.Taurus Hides Pvt. Lt.,
No.808/4B, Old Thiruthani Road,
Vannivedu Village, Walaja Pet,
Vellore District-632 513.

4.Shahnaz Bano
W/o.Fathemohammed
Additional Director of M/s.Taurus Hides Pvt. Lt.,
No.808/4B, Old Thiruthani Road,
Vannivedu Village, Walaja Pet,
Vellore District-632 513. .. Petitioners

vs.

Mrs.Nirmala Arunagiri,
Proprietrix M/s.Chandan Tannerys,
Represented by her Power Agent
N.Arunaghiree, age 54 years
S/o.K.R.Nandhagopal,
No.123, Bhavani Main Raod No.2,
North Kamaraj Nagar,
B.P.Agraharam,
Erode-638 005.

.. Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the complaint in S.T.C.No.106 of 2019 on the file of the learned Fast Track Judicial Magistrate No.1, Erode, quash the same as against the petitioners herein by allowing this quash petition.

For Petitioners: Mr.R.Prabhakar
For Respondent : Mr.M.Guruprasad

ORDER

This petition has been filed seeking to quash the proceedings in S.T.C.No.106 of 2019 on the file of the learned Fast Track Judicial Magistrate No.1, Erode.

2. The respondent has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the company and its directors. The petitioners have been arrayed as A4 to A7 in the complaint.

3. The present petition has filed before this Court seeking to quash the proceedings mainly on the ground that the complaint did not fulfil the requirements of Section 141 of the Negotiable Instruments Act. The learned counsel for the Petitioners to substantiate his submission, brought to the notice of this Court the allegations made in the complaint insofar as the petitioners are concerned and the same is extracted herein:

"4. The 2nd to 5th accused are the directors of the 1st accused company. The 7th and the 6th accused are the additional directors of the 1st accused company. The 2nd accused is also the authorized signatory of the 1st accused company. The 3rd accused is the husband of the 2nd accused. The 2nd and 3rd accused are managing the day to day affairs of the 1st accused company while the other accused 4 to 7, as its directors, are in control of all the financial affairs of the 1st accused company jointly and severally with the accused 2 and 3.

11. The 2nd and the 3rd accused are managing the day to day affairs of the 1st accused company, with the 2nd accused is also the authorized signatory of the 1st accused company. The accused 4 to 7, being the directors of the 1st accused company, are in actual management of all the financial aspects of it along with the accused 2 and 3. Hence, the said 2nd and 7th accused all liable to be penalized for not honouring the cheque. Hence, this complaint."

4. The learned counsel appearing on behalf of the respondent submitted that the accused persons had undertaken to settle the entire amount to the respondent before the Court below and thereafter, they have approached this Court seeking to quash the proceedings. The learned counsel therefore submitted that the attitude of the petitioners will have to be taken into

consideration and the petitioners will have to necessarily participate in the trial and should prove their innocence.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. The allegations made against the petitioners, that has been extracted supra does not satisfy the requirements of Section 141 of the Negotiable Instruments Act. Useful reference can be made to the judgment reported in Anil Pathak and Others Vs. M/s.Larsen and Tourbro Limited, Represented by its Authorized Representative Mr.V.K.Natarajan, reported in 2019 (1) MLJ (Criminal) 385. The relevant portions are extracted hereunder:

"12.From the above said judgments, it is very clear that it is not enough if the words used under Section 141 of the Negotiable Instruments Act, is merely extracted. In order to make a Director of a Company is liable for the offence committed by the Company under section 141 of the Negotiable Instruments Act, there must be a specific averment against the Director to show as to how and in what manner the Director was responsible for the conduct of the business of the Company. This Composition has been reiterated by the Hon'ble Supreme Court consistently.

15. This Court is not in agreement with the submission made by the learned counsel for the respondent. If it is enough to mechanically repeat the requirement under Section 141 (1) of the Negotiable Instruments Act, any number of Directors can be made as an accused in a complaint filed under Section 138 of Negotiable Instruments Act. This will lead to a situation where the Directors who have nothing to do with the day-to-day affairs of the Company, Nominee Directors etc., being made to face a criminal complaint just because there is a repetition of the words found under Section 141 (1) of the Negotiable Instruments Act. This may lead to an abuse of process of Court and any person who is shown as a Director will be made to undergo the ordeal of trial. That is the reason why the Hon'ble Supreme Court has repeatedly held in the judgments referred supra that the complaint has to specifically say as to how and in what manner the Director was responsible for the conduct of the business of the Company.

16. The judgments cited by the learned counsel for the respondent, does not take a contrary view and it merely reiterates that the allegations made in the complaint should satisfy the requirements of section 141 of the Negotiable Instruments Act. "

7. In the present case, except for the allegations referred supra, there is nothing else found in the complaint and the allegations against the petitioners is nothing but the reproduction of the language used under Section 141 of Negotiable Instruments Act. The above judgment will squarely apply to the facts of this case.

8. The continuation of the proceedings against the petitioners will amount to an abuse of process of Court and requires the interference of this Court under Section 482 of Cr.P.C.

9. In the result, the proceedings against the petitioners in S.T.C.No.106 of 2019 pending on the file of the Fast Track Judicial Magistrate I, Erode, is hereby quashed and this Criminal Original Petition is allowed. The Fast Track Judicial Magistrate I, Erode, is directed to complete the proceedings in S.T.C.No.106 of 2019 as against the other accused persons, within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1. The Judicial Magistrate (Fast track) Court II,
Erode.

+1 cc to Mr.M.Guruprasad Advocate sr8166

+1 cc to M/s.R.Prabakar Advocate sr8104

Cr1.O.P No.21341 of 2019

&

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