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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.09.2021

PRONOUNCED ON: 08.10.2021

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

CRL.O.P.NO. 4558 OF 2017

AND

CRL.M.P.NO. 3422 OF 2017

1.Subramani Rajbettan

2.M.O.Sulaiman Sait

... Petitioners/
Accused 2 & 3

Vs.

M/s.Saranam Tea Factory
Rep. by its Partner
Mr.K.B.Raju
S/o. Bheema Gowder
Kagguchi Village and Post
The Nilgiris District.

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and quash the proceeding in S.T.C.No. 1084 of 2015 on the file of the learned Judicial Magistrate, Kotagiri in so far as it relates to the petitioners herein.

For Petitioners : Mr.B.Kumarasamy

For Respondent : Mr.L.Mouli



ORDER

This Petition has been filed under Section 482 of the Code of Criminal Procedure by A-2 and A-3 in S.T.C.No. 1084 of 2015 pending on the file of the learned Judicial Magistrate, Kotagiri, seeking to quash the said S.T.C.No. 1084 of 2015.

2. A-1 is Imperial Tea Company (P) Limited., represented by its Chairman A-2/first petitioner has been shown as Director of A-1. A-3/second petitioner has been shown as a private individual. A-4 is John Gerald and A-5 is Bonita Maria Dinesh.

3. In the complaint filed, it had been stated that A-1 is a Tea Broker Company, and that A-2 and A-3 are the Chairman and Director of the Company. It had thereafter been stated that "the Company has been run by the 4th and 5th accused". With respect to the transactions between A-1 and the defacto complainant which is also a tea factory. A-4 had issued a postdated cheque dated 13.05.2015; on 26.05.2015 by cheque bearing No. 054152 drawn on State Bank of Travancore, Coonoor, for Rs.7,39,471/- in favour of the respondent/defacto complainant from the account of A-4.

4. In the present petition seeking to quash S.T.C.No. 1084 of 2015 which had been taken cognizance consequent to the said complaint, the petitioners have stated that it is the case of the respondent that it was only A-4 and A-5 who are running the A-1 Company and also that the cheque which had been issued and which had subsequently been dishonoured had been issued by A-4 from and out of the account of A-4.

5. Prior to filing of the complaint, the defacto complainant caused an Advocate notice to be issued to (1) Imperial Tea Company private limited, (2) Mr. John Gerald and (3) Mr. Bonita Maria Dinesh. The notice was not issued to the present petitioners herein. It had therefore been contended in the petition that S.T.C.No. 1084 of 2015 should be quashed in so far as the petitioners are concerned.

6. Heard arguments advanced by Mr. B.Kumarasamy, learned counsel for the petitioners and Mr. L.Mouli, learned counsel for the respondent.



7. The facts are simple and cannot be denied or disputed.

8. A-5 had issued a postdated cheque from his personal account to the respondent, which cheque when presented for payment had been returned as dishonoured by the bankers. Notice as stipulated under Section 138 of the Negotiable Instruments Act 1881 had been issued by the advocates on behalf of the respondent to (1) Imperial Tea Company private limited, (2) Mr. John Gerald and (3) Mr. Bonita Maria Dinesh. It had not been issued to the present petitioners/A-2 and A-3. Further in that complaint, it had not been stated that the petitioners are in control of the day-to-day activities of A-1 or that they are in-charge of the day-to-day activities of A-1. It had been very specifically stated that A-4 and A-5 alone are running A-1 Company.

9. The learned counsel Mr. B. Kumarasamy pointed out the above facts and stated that the present petitioners/A-2 and A-3 cannot therefore be forced to undergo the ordeal of trial particularly when notice prior to filing of the complaint had not been issued to them. Further the cheque had been issued and signed only by A-4 in his personal capacity from and out of his personal bank account.

10. Mr. L. Mouli, the learned counsel for the respondent however stated that A-5 had issued the cheque on instructions from the other accused and therefore all the accused should face trial and the learned counsel further stated that the facts mentioned should be decided during the course of trial.

11. I have carefully examined the arguments advanced.

12. Admittedly notice as required under Section 138 of the Negotiable Instrument Act had not been issued to the petitioners. There is no averment that they are in-charge of the day-to-day activities of A-1. The cheque had not been issued by A-1. The cheque had been issued by A-4 in his personal capacity from and out of his bank account.

13. Section 138 of the Negotiable Instrument Act is as follows:-



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"138 Dishonour of cheque for insufficiency, etc., of funds in the account. – Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless–

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.]



[Emphasis Supplied]""

14. In 2007 (3) SCC 693 [Saroj Kumar Poddar Vs. State (NCT of Delhi) and Another] the Hon'ble Supreme Court had held as follows:-

"12. A person would be vicariously liable for commission of an offence on the part of a company only in the event the conditions precedent laid down therefor in Section 141 of the Act stand satisfied. For the aforementioned purpose, a strict construction would be necessary."

(15) In 2010 (11) SCC 203 [Central Bank of India Vs. Asian Global Ltd., and Others], the Hon'ble Supreme Court had held as follows:-

"16. It was further held that while a Managing Director or a Joint Director of the company would be admittedly in charge of the company and responsible to the company for the conduct of its business, the same yardstick would not apply to a Director. The position of a signatory to a cheque would be different in terms of sub-section (2) of Section 141 of the 1881 Act. That, of course, is not the fact in this case.

18. In this case, save and except for the statement that the respondents, Mr Rajiv Jain and Sarla Jain and some of the other accused, were Directors of the accused Companies and were responsible and liable for the acts of the said Companies, no specific allegation has been made against any of them. The question of proving a fact which had not been mentioned in the complaint did not, therefore, arise in the facts of this case..."

(16) In 2011 (1) SCC 176 [Pepsico India Holdings Pvt. Ltd., Vs. Food Inspector and Another], the Hon'ble Supreme Court had held as follows:-



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"50. It is now well established that in a complaint against a company and its Directors, the complainant has to indicate in the complaint itself as to whether the Directors concerned were either in charge of or responsible to the Company for its day-to-day management, or whether they were responsible to the Company for the conduct of its business. A mere bald statement that a person was a Director of the Company against which certain allegations had been made is not sufficient to make such Director liable in the absence of any specific allegations regarding his role in the management of the Company. "

(17) In 2018 (14) SCC 202 [Ashoke Mal Bafna Vs. Upper India Steel Manufacturing and Engineering Company Ltd.,], the Hon'ble Supreme Court had held as follows:-

"9. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business at the time of commission of an offence will be liable for criminal action. (See Pooja Ravinder Devidasani v. State of Maharashtra [Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378 : AIR 2015 SC 675] .)

10. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the Act, there must be specific averments against the Director



showing as to how and in what manner the Director was responsible for the conduct of the business of the Company. "

WEB COPY (18) In AIR 2019 SCC 2518 [A.R.Radha Krishna Vs. Dasari Deepthi and Ors.], the Hon'ble Supreme Court had held as follows:-

"9. In a case pertaining to an offence under Section 138 and Section 141 of the Act, the law requires that the complaint must contain a specific averment that the Director was in charge of, and responsible for, the conduct of the company's business at the time when the offence was committed. The High Court, in deciding a quashing petition under Section 482 CrPC must consider whether the averment made in the complaint is sufficient or if some unimpeachable evidence has been brought on record which leads to the conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time. While the role of a Director in a company is ultimately a question of fact, and no fixed formula can be fixed for the same, the High Court must exercise its power under Section 482 CrPC when it is convinced, from the material on record, that allowing the proceedings to continue would be an abuse of process of the Court. [See Gunmala Sales (P) Ltd. v. Anu Mehta [Gunmala Sales (P) Ltd. v. Anu Mehta, (2015) 1 SCC 103 : (2015) 1 SCC (Civ) 433 : (2015) 1 SCC (Cri) 580]

10. A perusal of the record in the present case indicates that the appellant has specifically averred in his complaint that Respondents 1 and 2 were actively participating in the day-to-day affairs of Accused 1 company. Further, Accused 2 to 4 (including Respondents 1 and 2 herein) are alleged to be from the same family and running Accused 1 company together. The complaint also specifies that all the



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accused, in active connivance, mischievously and intentionally issued the cheques in favour of the appellant and later issued instructions to the bank to "stop payment". No evidence of unimpeachable quality has been brought on record by Respondents 1 and 2 to indicate that allowing the proceedings to continue would be an abuse of process of the court. "

19. In (2013) 1 SCC 177 [MSR Leathers Vs. S.Palaniappan], the Hon'ble Supreme Court has held as follows:-

"12. The proviso to Section 138, however, is all-important and stipulates three distinct conditions precedent, which must be satisfied before the dishonour of a cheque can constitute an offence and become punishable. The first condition is that the cheque ought to have been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. The second condition is that the payee or the holder in due course of the cheque, as the case may be, ought to make a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. The third condition is that the drawer of such a cheque should have failed to make payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice. It is only upon the satisfaction of all the three conditions mentioned above and enumerated under the proviso to Section 138 as clauses (a), (b) and (c) thereof that an offence under Section 138 can be said to have been committed by the person issuing the cheque."

(emphasis supplied)"



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20. This Judgment had been subsequently followed in (2014) 2 SCC 424 [Kamlesh Kumar Vs. State of Bihar and Another], wherein the Hon'ble Supreme Court had held as follows:-

"15. It is, thus, apparent that the complainant received the information about the dishonour of the cheque on 10-11-2008 itself. However, he did not send the legal notice within 30 days therefrom. We, thus, find that the complaint filed by him was not maintainable as it was filed without satisfying all the three conditions laid down in Section 138 of the NI Act as explained in para 12 of the judgment in MSR Leathers [MSR Leathers v. S. Palaniappan, (2013) 1 SCC 177 : (2013) 1 SCC (Civ) 424 : (2013) 2 SCC (Cri) 458] , extracted above.

16. We have, thus, no hesitation in allowing this appeal and setting aside the impugned order of the High Court. As a consequence, the petition filed by the petitioner under Section 482 CrPC is also allowed and the complaint of the complainant is dismissed. "

[Emphasis supplied]

21. The ratio laid down in the above Judgments are very clear. They are also binding. It must be very specifically stated in the complaint that the petitioners were in-charge of the day-to-day activities of A-1. It has not been so stated in the instant complaint. The cheque was issued by A-5 from and out of his personal account. It had not been issued by the present petitioners/A-2 and A-3. The advocate notice was not issued to the present petitioners/A-2 and A-3. There has been no compliance of the stipulations under Section 138 Negotiable Instruments Act 1881. I have no hesitation in interfering with further progress of S.T.C.No. 1084 of 2015 now pending on the file of the learned Judicial Magistrate at Kotagiri, in so far as the petitioners/A-2 and A3 are concerned.

22. Accordingly, the present petition is allowed. S.T.C.No. 1084 of 2015 on the file of the learned Judicial Magistrate, Kotagiri, is quashed so far as the petitioners/A-2



and A-3 are concerned. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(L.A)

// True Copy //

Sub Assistant Registrar

vsg

To

The Judicial Magistrate,
Kotagiri.

+1cc to M/s.L.Mouli, Advocate, S.R.No.53108

Cr1.O.P.No. 4558 of 2017

And

Cr1.M.P.No. 3422 of 2017

RLD(CO)

RLP(17/11/2021)