



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CrI. O.P. No. 15814 of 2017
and
CrI.M.P.No.9853 of 2017

1. Thyagarajan Rajkumar
 2. Arunkumar Bhadra Devi
 3. Raj Kumar Chitra
 4. Ramesh Kumar
- ...Petitioners/Accused 3 to 6

Vs

Jineshwar Capital
rep. By its Partners
Mr.Pramod Chordia
Mrs.P.Manisah Chordia
rep. By their Power Agent
Mr.Tarunkumar Jain
Chennai.

...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in C.C.No.2792 of 2017 on the file of the learned XIX Metropolitan Magistrate, Periamet, Chennai 600 003.

For Petitioners : Mr.C.S.Dhanasekaran

For Respondent : Mr.E.Senthil Kumar

O R D E R

This Criminal Original Petition has been filed to quash C.C.No.2792 of 2017 pending on the file of the learned XIX Metropolitan Magistrate, Periamet, Chennai.

2.Heard Mr.C.S.Dhanasekaran, learned counsel for the petitioners and Mr.E.Senthil Kumar, learned counsel for the respondent.

3.It is the contention of the learned counsel appearing for the petitioners that except contending that the accused 3 to 6/petitioners are involved in day-to-day affairs of the Company,



there is no allegation made against them. It is his further contention that they cannot be prosecuted unless it is pleaded that they were responsible for the conduct of the business of the company, at the time of commission of offences, punishable under Section 138 of the Negotiable Instruments Act. No such pleadings whatsoever is available on record, particularly, in the complaint filed by the respondent. Therefore, they cannot be prosecuted and hence prays for quashing C.C.No.2792 of 2017.

4.The learned counsel appearing for the respondent submitted that in the complaint as well as in the sworn statement, the complainant has clearly stated that the accused being Managing Directors of the Company are involved in the day-to-day affairs of the Company. Therefore, he submitted that sufficient pleadings are already there. Hence prays for dismissal of this Criminal Original Petition.

5. Perused the materials available on record.

6.It is to be noted that normally the person incharge of the company, at the time of commission of the offence would be punishable. Even in the sworn statement of the complainant, it is mentioned that the first accused is a Company and the accused 2 is a Managing Director and accused 3 to 6 are Directors of the first accused Company, who are involved in day-to-day affairs of the Company. Hence, all the accused are liable to be punished for the offence punishable under Section 138 of the Negotiable Instruments Act.

7. In ASHOKE MAL BAFNA Vs. UPPER INDIA STEEL MFG AND ENGG CO LTD., AIR 2017 SC 2854, the Hon'ble Apex Court has held that only those persons who were incharge and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. Director of a Company, who is not responsible for the commission of offence cannot be held liable. There must be a specific averment against the Director showing as to how and in what manner he was responsible for the conduct of the business of the Company and commission of offence.

8.Reading of Section 141 of the Negotiable Instruments Act, makes it clear that to prosecute the Company for an offence under Section 138 of the Negotiable Instruments Act, a person who at the time of offence committed must be incharge of and was responsible to the Company alone would be prosecuted, and found to be guilty.

9.As the pleadings in this case is lagging to show the manner in which all the Directors were responsible for the offence committed at the time of commission of offence and



merely on the basis of bald allegations, applicant cannot be prosecuted. Accordingly, this Criminal Original Petition is allowed. Proceedings under Section 138 of the Negotiable Instruments Act, as against these petitioners alone are quashed. Trial Court is directed to dispose of the private complaint as against the accused 1 and 2 expeditiously, preferably within a period of six months from the date of receipt of a copy of this order. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

mvs.

To

The XIX Metropolitan Magistrate,
Periamet, Chennai 600 003.

+1cc to Mr.C.S.Dhanasekaran, Advocate, S.R.No.57972

+1cc to Mr.E.Senthilkumar, Advocate, S.R.No.57746

Cr1. O.P. No. 15814 of 2017
and
Cr1.M.P.No.9853 of 2017

PL(CO)
RGA(02/12/2021)