IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2021

CORAM

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Crl.O.P.No. 28378 of 2017
and
Crl.M.P.Nos. 16128 & 16129 of 2017

Selvam
Proprietor,
M/s. Sri Maruthi Traders,
5/19B, Nachur,
Potanam Post,
Namakkal Taluk and District.

... Petitioner

Vs

Sumermal R. Mehtha
Proprietor,
M/s. Sumer Starch Products
Roopchand Mehtha
31, Madha Kovil Street,
Shevapet, Salem-2. ... Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C, praying to set aside the order dated 03.08.2017, passed in C.M.P.No.3663/2017 in S.T.C.No. 304 of 2016 on the file of Judicial Magistrate Court - III, Salem and to allow the Criminal Original Petition.

For Petitioner : Mr.C. Prabakaran

For Respondent : Mr.R. Nalliyappan

ORDER

This petition has been filed to set aside the order passed in C.M.P.No.3663/2017 in S.T.C.No. 304 of 2016, dated 03.08.2017 on the file of the learned Judicial Magistrate-III, Salem.

2. The petitioner is the accused in S.T.C. No. 304 of 2016 on the file of the learned Judicial Magistrate No.III, Salem.

3. The respondent/complainant, represented by its Proprietor Mr.Sumermal R. Mehtha, filed a complaint before the Judicial Magistrate Court No.III, Salem, against the accused for the alleged offence punishable under Section 138 of the Negotiable Instruments Act, (in short "NI Act") 1881.

4. According to the respondent/complainant, the respondent is the Proprietor of M/s.Sumer Starch Products, having business transaction of supplying of starch on credit basis to the petitioner/accused. The respondent had regular business transaction with the accused and during the course of business, a sum of Rs.8,23,345/- was due and payable by the accused for which, the accused issued a cheque for a sum of Rs.6,02,000/- bearing No.135519, dated 15.04.2015 drawn on Syndicate Bank, Annadanapatti Branch, Salem. When the said cheque was presented before the banker viz., Syndicate Bank, Annadanapatti Branch, Salem on 15.04.2015, the cheque was returned for the reason "insufficient funds" on 16.04.2015. Thereafter, the respondent issued a notice to the accused, calling upon him to make good the payment due under the cheque. Since the said notice did not evoke any response from the accused, the respondent filed a complaint under section 138 of NI Act, 1881, before the Judicial Magistrate Court No.III, Salem, in STC.No.304 of 2016. During the pendency of the petition, the respondent/complainant has filed in CMP.No.3663 of 2017, to receive the documents under Section 294(1) of CrPC., and the same was allowed by order dated 03.08.2017. Aggrieved by the said order, the petitioner/accused has filed this Criminal Original Petition.

5. The learned counsel appearing for the petitioner/accused submitted that the provision of law as mentioned in the petition, is not correct and thereby, the application itself is not maintainable, either in law or on facts. He further submitted that there is no explanation for not producing the documents along with the complaint, which is very much available with them at the time of issuing notice and at the time of filing of complaint as well. He further submitted that the document in question cannot be allowed to be marked as the whims and fancies of the respondent/complainant, on their own and even the proof and relevancy of the same need not to be looked into in such type of matters which are made definitely after thought and hence, indulgence, may be shown by this Court by setting aside the impugned order.

6. Now, the present Criminal Original Petition is filed by the accused contending that he has nothing to do with the affairs of the respondent's firm and that he did not take active part in the day-to-day business transactions of the respondent's firm.

7. The learned counsel appearing for the petitioner/accused relied on the following decisions.-

(i) [Rallis India Limited v. Poduru Vidya Bhusan and Others, reported in 2011 (4) SCALE 614].

(ii) [Veeran and Others v. State of Madhya Pradesh reported in 2011 (4) Scale 618] and

(iii) [National Small Industries Corporation Ltd., v. Harmeet Singh Paintal and Another, reported in (2010) 3 SCC 330] and contended that it is very clear from Section 141 of the NI Act, that what is required is that the person who is sought to be made vicariously liable for a criminal offence under Section 141 should be, at the time of the commission of offence, in charge of, and responsible to the Company for the conduct of the business of the company. He further contended that every person connected with the Company shall not fall within the ambit of the provision and only those persons who were in charge of 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.

8. Per contra the learned counsel appearing for the respondent/complainant contended that, as per Section 141 of the NI Act, 1881, if every person who at the time of commission of offence was in charge of or responsible for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. He further contended that the respondent/complainant, in his complaint, as well as in his sworn statement before the learned Judicial Magistrate No.III, Salem, has specifically stated that the accused took active part in the day-to-day business transactions of the respondent/complainant.

9. Heard both sides and perused the materials available on record.

10. A perusal of the complaint shows that the accused, was having some business transactions with the respondent/complainant, at the relevant point of time. There are specific averments against the accused in the complaint, which cannot be stated as bald averments. In fact, the respondent had referred the accused as a Proprietor, who was in-charge of the respondent/Firm. Further, the petitioner/accused, though received the notice, did not issue any reply notice to the respondent/complainant denying his liability. It is not out of place to mention here, that, according to the respondent/complainant, the accused viz., Selvam, Proprietor of M/s.Sri Maruthi Traders, had business transactions with the

respondent/complainant and in the course of such business, a sum of Rs.8,23,345/- was due and liable by the accused. When there are positive averments in the complaint as regards the role played by the petitioner herein, it cannot be held at this stage that the petitioner did not take active part in the day to day affairs of the respondent/Firm. However, it is always open to the petitioner to prove his innocence before the trial Court at the time of trial.

11. The proviso, under Section 141 of the NI Act, clearly lays down that, if the accused is able to prove to the satisfaction of the Court that the offence is committed without his knowledge or he had exercised due diligence to prevent the commission of such offence, he will not be liable for punishment.

12. Whether there are allegations against the accused or not and the question as to whether, the present petitioner was in charge of day-to-day affairs of the Firm, can only be decided at the time of trial. Hence, I do not find any reason to set aside the impugned order passed by the Court below under Section 482 of Cr.P.C., especially, when there is a specific averment in the complaint that the present petitioner was in-charge of the affairs of the respondent Firm, on the date of the offence.

13. Accordingly, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//
Sub Assistant Registrar

msm

To

1. The Judicial Magistrate Court - III,
   Salem.

2. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.39204

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PM(CO)
SU(13/10/2021)