IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.04.2022

PRONOUNCED ON : 17.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Original Petition No.733 of 2019
and
Crl.M.P.No.466 of 2019

M/s.Indian Institute of Logistics Pvt. Ltd.,
Rep. by its Managing Director,
Mr.Pushpa Kumar,
No.6, Esplanade 2nd Floor,
Indian Chambers Building,
Chennai - 600 108. :Petitioner/2nd Accused

Vs

M/s.ICICI Bank Ltd.,
Rep. by its Power of Attorney Holder, Mr.Moorthy,
ICICI Bank Towers,
Regional Office at: No.24, South Phase,
Ambattur Industrial Estate, Ambattur,
Chennai - 58. :Respondent/Complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, seeking to call for the records in C.C.No.794 of 2018 now pending on the file of the learned Judicial Magistrate, Fast Track Court at Ambattur, Chennai and quash the complaint and all the further proceedings.

For Petitioner : Mr.N.S.Sivakumar

For Respondent : Mr.T.Muruganantham

ORDER

This Criminal Original Petition had been filed to quash all the further proceedings in C.C.No.794 of 2018 pending on the file of the learned Judicial Magistrate, Fast Track Court, Ambattur, Chennai.

2.The learned Counsel for the Petitioner submitted his arguments. As per the submissions of the learned Counsel for the Petitioner, the Petitioner - Pushpa Kumar is arrayed as second Respondent in the complaint in C.C.No.794 of 2018 on the file of the learned Judicial Magistrate, Fast Track Court, Ambattur, Chennai. As per the complaint, the Respondent/ Complainant had received cheques of different amounts on the same day totalling an amount of Rs.1,76,43,951/- in favour of the Respondent/Complainant. When the said cheuqes were presented for encashment, the same was returned with an endorsement "fund insufficient". It is the submission of the learned Counsel for the Petitioner that there is no specific averment against the second Accused/Petitioner herein. The operations of the first Accused Company commenced in the year 2015 and was going concern. The Petitioner had approached the complainant in the year 2016 for financial assistance. The first Accused had obtained loan from the complainant. The second Accused and another stood only as guarantors to the first Accused Company. The Respondent/Complainant had requested the Petitioner/first Accused to issue blank cheques as security and ensured that the Respondent/Complainant would not present the cheques unless specific instructions are obtained from the Petitioner/First Accused. The Petitioner was repaying the loan regularly. The Respondent/Complainant had not taken into consideration the amounts which were repaid by the Petitioner/First Accused. The Respondent/Complainant had taken over the vehicle and sold it in public auction. While things stood thus, the Petitioner received a complaint on 13.12.2018 that the Respondent/ Complainant had deposited 9 cheques of different amounts on the same day claiming an amount of Rs.1,76,43,951/- from the Petitioner/first Accused. The complaint filed by the Respondent/Complainant is not maintainable as the complaint does not state specifically the role of the Petitioner herein/Accused 2 in the complaint except making a bald allegation that he is in-charge of the Management and affairs of the first Accused Company. This Petitioner had been roped in in the complaint only on the concept of vicarious liability. This is not permissible and unknown to criminal prosecution. Hence, the cognizance taken by the learned Judicial Magistrate for the offence under Section 138 of Negotiable Instruments Act, 1881 is not valid in the eyes of law as the complaint filed against the second Accused, who is not even a signatory of the first Accused Company. The complaint had been filed only with a mala fide intention and with ulterior motive to harass the Petitioner/second Accused and settle the dispute pending between the complainant and other Accused. He further submitted that as per section 141 of Negotiable Instruments Act, 1881, the complaint filed under Negotiable Instruments Act, 1881 against the Company or Partnership firm should clearly state the role played by the Directors of Company/Partners of a firm, without which a complaint under Section 138 of the Negotiable Instruments Act is not maintainable. Therefore, the Petitioner seeks to quash the complaint in C.C.No.794 of 2018 pending on the file of the learned Judicial Magistrate, Fast Track Court, Ambattur, Chennai.

3.In support of the submission of the learned Counsel for the Petitioner, the learned Counsel for the Petitioner relied on the following rulings:

3.1.In the case of K.Janakimanoharan and another -vs- M/s.Gayatri Sugar Complex Limited, Hyderabad and another reported in 2000 SCC OnLine AP 402, the High Court of Andhra Pradesh at Hyderabad has observed as follows:

> "14.It is pertinent to notice that so far as these Petitioners-Directors are concerned, there is not even a whisper, nor anything to show that there is any act as such committed by them from which any inference can be drawn by which they could also be held vicariously liable.
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> 15.It is true that the entire evidence, upon which the complainant may rely to establish its case, need not be disclosed in the complaint itself. But the law requires that there must be clear, unambiguous and specific allegations against the Directors of a company who are arrayed as Accused and such allegations should reveal that they were responsible to the company for the conduct of its business at the material time when the offence was committed by the company. Simply because a person is the Director of the company at the relevant time, it does not necessarily mean that he was in charge of and was responsible to the company for the conduct of its business.
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> 22.It is held that "mere absence of an averment in the complaint that the Petitioner-Accused was in-charge of and was responsible to the Company does not justify quashing of the proceedings in these cases inasmuch as the Petitioner-Accused has been shown to be the Managing Director of the Company." This Court obviously took the view that in case of a Managing Director, there need not be an averment in the complaint that he was in-charge of and was responsible to the company. The principle cannot be made applicable in case of a Director, as it is common knowledge that some of the Directors may not even be knowing as to what is going on day-to-day in the company, they may not do anything in the business of the company.
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> 28.In this case the contents of the complaint alone are scrutinized in accordance with the parameters of review in exercise of jurisdiction under

Sec. 482 of the Code as repeatedly laid down by the Apex Court. We have already adverted to the averments made in the complaint so far as these Petitioners are concerned. The averments do not attract the ingredients of Sec. 138 read with Sec. 141 of the Act. There is no allegation as such against the Petitioners herein suggesting their involvement in any manner whatsoever attracting Sec. 141 of the Act. May be the offence was committed by the company and others who are in-charge of the affairs of the company and responsible in its management. No opinion need be expressed on the question as to whether the other Accused are responsible for the offence, if any, committed by the company.”

3.2.In the case of Charanjit Singh -vs- DB Merchant Banking Services Ltd., reported in 2001 (58) DRJ 168, the High Court of Delhi has observed as follows:

> “The contention of the learned Counsel for the Respondent that the liability of the Petitioner may be presumed by virtue of sub clause (2) of Section 142 of the Act is without any merit. In a criminal case, it is for the complainant to allege and make out all the ingredients of the offence before calling upon the Court to proceed against an Accused. Only those presumptions which are permissible under the law are permitted to be raised against an Accused. All other facts are required to be established by the complainant/prosecution. The Accused can always rely upon the presumption of innocence in his favour.”

3.3.In the decision of the Hon'ble Supreme Court in the case of N.K.Wahi -vs- Shekhar Singh and others reported in (2007) 9 Supreme Court Cases 481, it has observed as follows:

> A.Negotiable Instruments Act, 1881 – Sections 138 and 141 – Dishonour of cheque – Offence by company – Vicarious liability of the Director/employee of the company – Conditions required for establishing liability – Held, under S. 141, if any offence is committed by a company, then every person who is a Director/employee is not liable – Liability lies only on such person(s) who at the time of commission of offence were in charge and were responsible to the company for conduct of the business of the company as well as the company – Merely being a Director of the company would not make such person liable.
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> B. Negotiable Instruments Act, 1881 – Sections 138 and 141 – Dishonour of cheque – Offence by company – Vicarious liability of the Director/employee of the

company – Requirements for launching prosecution – Requisite averments in complaint – Held, for launching a prosecution against the alleged Directors, there must be a specific allegation in the complaint as to the part played by them in the translation – Allegation should be clear and unambiguous as to how the Directors were in charge and responsible for the conduct of the business of the company – Description should be clear.

C. Negotiable Instruments Act, 1881 – Sections 138 and 141 – Dishonour of cheque – Offence by company – Vicarious liability of the Director/employee of the company – Requisite averments in complaint – Requirement of – Held, the precise words from Section 141 need not be reproduced in the complaint and the court can always come to a conclusion on fats in each case – However, the absence of any averments or specific evidence would result in the complaint becoming not entertainable.

3.4.In another decision of the Hon'ble Supreme Court in the case of S.M.S. Pharmaceuticals Ltd., -vs- Neeta Bhalla and another reported in (2007) 4 SCC 70, it has held as follows:

"A. Negotiable Instruments Act, 1881 – Sections 141 and 138 – Dishonour of cheuqe – Offence by company – Vicarious liability of Director – Requirements under Section 141 in respect of – Satisfaction of – Necessary averments to be made in complaint – Held, under Section 141, a Director does not automatically become vicariously liable for offence committed by company – It has to be averred in the complaint that the person proceeded against was in charge of, and responsible to the company for the conduct of its business – The said two requirement s laid down in Section 141 have to be read conjointly and not disjunctively – Liability of Director to be determined on the date on which the offence was committed – In the present case, the complaint showed that it was only Accused 2 and not Respondent 1 who was actively associated with the affairs of the Company – Mere mentioning of name of Respondent 1 in purported resolution which authorised Accused 2 to do certain acts on behalf of Company, was of no consequence – Thus, averments made in complaint did not satisfy statutory."

3.5.In yet another decision of the Hon'ble Supreme Court in the case of Ashoke Mal Bafna -vs- Upper India Steel Manufactuing and Engineering Company Limited reported in (2018) 14 SCC 202, it has observed as follows:

"A.Debt, Financial and Monetary Laws – Negotiable Instruments Act, 1881 – Section 141 – Offences by companies – Vicarious liability under Section 141 – How to be construed and fastened on a person – When can Director of a Company be made liable for offences committed by Company under Section 141 – Principles summarised.

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."

4.The learned Counsel for the Respondent/Complainant submitted that the arguments of the learned Counsel for the Petitioner cannot be considered by exercising discretion under Section 482 in the light of the guidelines issued by the Hon'ble Supreme Court to the High Courts by exercising discretion under Section 482 of Cr.P.C. The learned counsel for the Respondent/Complainant further submitted that the complaint is filed against one Pushpa Kumar. He claims to be the Chief Executive Officer in both the Companies and he sought loan from the Respondent/Complainant. While granting loan, the Petitioner herein had issued cheques and the cheques were presented, which was returned with an endorsement 'insufficient funds'. Therefore, notice was issued on all the Accused. The learned Counsel for the Respondent invited attention of this Court to the averments in the complaint furnished along with this Petition. He also invited the attention of this Court to the loan transaction of the Respondent/Complainant. Further, the learned Counsel for the Respondent/Complainant submits that it is a case involving crores of rupees, where the Petitioner had after availing loan, failed to repay the same and thereby committed offence under Section 138 of Negotiable Instruments Act.

5.If at all the submission of the learned counsel for the Petitioner is to be accepted, it is to be considered as valuable defence only at the time of trial and not at this stage while exercising discretion under Section 482 of Cr.P.C. Therefore, the learned counsel for the Respondent/Complainant sought to dismiss this petition as not maintainable.

6.On perusal of the complaint shows that no specific averments had been stated in the compliant regarding the role played by each of the Directors of the Company attracting offences under Section 138 of the Negotiable Instruments Act, 1881.Therefore, the learned Counsel for the Petitioner seeks to quash the complaint in C.C.No.974 of 2018 on the file of the learned Judicial Magistrate, Fast Track Court, Ambattur, Chennai.

7.On consideration of the rival submissions and on perusal of the complaint, it is found that the complaint is bald regarding the role played by each of the Directors of the Company. In the light of the above rulings cited by the learned Counsel for the Petitioner in (1) 2000 SCC OnLine AP 402 [K.Janakimanoharan and another -vs- M/s.Gayatri Sugar Complex Limited, Hyderabad and another], (2) 2001 (58) DRJ 168 [Charanjit Singh -vs- DB Merchant Banking Services Ltd.], (3) (2007) 9 Supreme Court Cases 481 [N.K.Wahi -vs- Shekhar Singh and others], (4) (2007) 4 SCC 70 [S.M.S. Pharmaceuticals Ltd., -vs- Neeta Bhalla and another] and (5) (2018) 14 SCC 202 [Ashoke Mal Bafna -vs- Upper India Steel Manufactuing and Engineering Company Limited], the averments in the complaint is found bald regarding the role played by each of the Directors of the Company. Under those circumstances, the complaint filed by the Respondent/Complainant before the learned Judicial Magistrate, Fast Track Court, Ambattur is not maintainable in law.

In the result, this Criminal Original Petition is allowed.

The Criminal Compliant in C.C.No.794 of 2018 on the file of the learned Judicial Magistrate, Fast Track Court at Ambattur, Chennai is quashed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

SRM

To:

1. The Judicial Magistrate,
   Fast Track Court at Ambattur,
   Chennai.

2. The Public Prosecutor,
   High Court, Chennai.

+2cc to mr.N.S.Sivakumar, Advocate, S.R.No.37269

Crl.O.P.No.733 of 2019

KV(CO)
RGA(11/07/2022)