IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.04.2022

PRONOUNCED ON : 17.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Original Petition No.2226 of 2019
and
Crl.M.P.No.1447 of 2019

Vijayraj Surana ... Petitioner/Accused 5

Vs

1. UCO Bank,
   Flagship Corporate Branch,
   PLA Rathina Towers,
   Mount Road, Chennai - 600 006,
   Represented by its Assistant General Manager,
   Mr.B.Rajasekar. ... 1st Respondent/Complainant

2. M/s.Surana Power Ltd.,
   Represented by its Managing Director & Authorised Signatory,
   Chokkani Towers,
   No.29, Whites Road II Floor,
   Royapettah, Chennai - 600 014.

3. Dinesh Chand Surana,
   Managing Director M/s.Surana Powers Ltd.,
   49 & 34A Block,
   6th Street, Anna Nagar (East),
   Chennai - 600 112.

4. Shantilal Surana,
   Director, M/s.Surana Powers Ltd.,
   New No.23, Old No.13A, Mandapam Road,
   Kilpauk, Chennai - 600 010.

5. G.R.Surana,
   Director, M/s.Surana Powers Ltd.,
   No.29, Whites Road II Floor,
   Royapettah, Chennai - 600 014.
   Also At No.2, Vimala Street,
   Ayyavoo Colony,
   Aminjikarai, Chennai - 600 029.

... Respondents 1 to 4/Respondents 2 to 5

[Respondents 2 to 5 are deleted as per order in Crl.O.P.No.2226 of 2019 and Crl.M.P.Nos.1447 & 1448 of 2019, dated 29.01.2019]

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, seeking to call for the records relating to C.C.No.3645 of 2015 on the file of the learned XIV Metropolitan Magistrate - Fast Track Court II, Egmore, Chennai and to quash the same.

For Petitioner : Mr.S.Sundaresan

For Respondent R1 : Mr.R.Chandramohan

ORDER

This Criminal Original Petition had been filed to quash the Proceedings in C.C.No.3645 of 2015 on the file of the learned XIV Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai.

2.The learned Counsel for the Petitioner submitted his arguments. As per his submissions, the Petitioner is arrayed as Accused No.5 in the complaint preferred by the first Respondent under Section 138 of the Negotiable Instruments Act, 1881. The learned Counsel for the Petitioner referred to the averments in the complaint against the Petitioner which states that the first Accused is a Company registered under the Company's Act, 1956, and engaged in the Generation, Production and sale of Electricity and the other Accused 2 to 5 are Managing Director and Directors of the Company. The Accused in the usual course of their business activities, have availed various financial/credit facilities from the Complainant bank including opening of Irrevocable Letters of Credit Facility on 26.12.2014, for purchase of Indonesian Coal (Non-Coking coal), 6,500 MTS @ 7500 PMT with 4.5% VAT, from M/s.Natural Coal Private Limited. The Complainant has acceded to the request of the accused for opening Inland Letter of Credit in favour of the accused for purchase of coal from the said M/s.National Coal Private Limited for a sum of Rs.5,03,21,250/- (Rupees Five Crore Three Laksh Twenty one thousands two hundred and fifty only). As per the Complaint, the date referred is 26.12.2014 regarding the allegation against First Accused Company. On the alleged date, the Petitioner herein, who was arrayed as A-5 in the complaint in C.C.No.3645 of 2015, was not at all the Director of the Company. The learned Counsel for the Petitioner invited the attention of this Court to Section 141 of the Negotiable Instruments Act, 1881 regarding the offences by Companies. If the first Respondent/Complainant had been vigilant and alert, he ought to have obtained the details regarding the Company from the website of the Ministry of Corporate Affairs, a Government of India undertaking, which uploads details of the change in the Board of Directors of the Company as recorded by the Registrar of Companies. Therefore, on the date of filing of this complaint by the first Respondent/Complainant, the Petitioner herein who was arrayed as Accused No.5, was not a Director of the first Accused Company, particularly, on the date of alleged offence mentioned in paragraph No.8 of the complaint, dated 28.12.2014, the Petitioner had already resigned in the year 2012. The alleged cheque was issued in the year 2015. Subsequent to the date of resignation of the Petitioner/Accused No.5, the Petitioner, who is arrayed as Accused No.5, has nothing to do with the alleged offences mentioned in the complaint.

3.The learned Counsel for the Petitioner invited the attention of this Court to the reported rulings 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 and in the case of National Small Industries Corp. Ltd., -vs- Harmeet Singh Paintal and Another reported in CDJ 2010 SC 153 for the proposition that before filing the complaint, the first Respondent/Complainant ought to have furnished the printed/downloaded copy from the Ministry of Corporate Affairs regarding the status of the Petitioner but no such document is filed as document along with the complaint. The learned Counsel for the Petitioner also relied on the decision of the Hon'ble Supreme Court in the Case of Anand Kumar Mohatta and Another -vs- State (Govt. of NCT of Delhi), Department of Home and Another reported in CDJ-2019-SC-1126.

4.In the light of the above rulings, the learned Counsel for the Petitioner submitted that the complaint preferred by the first Respondent/Complainant is not maintainable against the Petitioner herein who is arrayed as Accused No.5 who had resigned as early as on 24.01.2012 and there is no specific averments against the Petitioner/Accused No.5 anywhere in the complaint regarding the overt act of the Petitioner.

5.The learned Counsel for the Petitioner had furnished Form-32, a copy of the e-mail regarding the resignation and acceptance of the same by the Company which is uploaded in the website of the Registrar of Companies under Form-32.

6.The learned Counsel for the first Respondent/Complainant vehemently objected to the submissions of the learned Counsel for the Petitioner seeking to quash C.C.No.3645 of 2015 against the Petitioner/Accused No.5 stating that he had already resigned in the year 2012. The learned Counsel for the first

Respondent/Complainant submitted that the offences alleged against the Company was a continuous process. Later on, payment takes place for more than Rs.5 Crores. The learned Counsel for the first Respondent/Complainant invited the attention of this Court to the particulars of Director/Designated Partner Details in respect of the Petitioner/Accused No.5 which is the copy downloaded from the website of Ministry of Corporate Affairs dated 23.06.2016 at 06.40.04 p.m. As per the said particulars, the status of the Petitioner/Accused No.5 is shown as under:

Name of the Company/LLP	Current designation of the Director/ Designated Partner	Date of appointment at current designation	Original date of appointment	Date of cessation	Company/LLP Status	Defaulting Status
SURANA CORPORATION LIMITED	Managing Director	04.03.2004	04.03.2004	-	Active	-
UDAY ENERGY PRIVATE LIMITED	Director	17.03.2011	17.03.2011	-	Active	-
SURANA WIND ENERGY PRIVATE LIMITED	Director	18.05.2012	18.05.2012	-	Active	-
GURUDEV WIND ENERGY PRIVATE LIMITED	Director	06.06.2012	06.06.2012	-	Active	-
SURANA GREEN POWER LIMITED	Director	03.03.2010	03.03.2010	27.01.2012	Active	-
SURANA PROJECTS PRIVATE LIMITED	Managing Director	12.03.2012	12.03.2012	-	Active	-
METALKING VENTURES PRIVATE LIMITED	Director	13.08.2013	10.07.2013	16.09.2013	Active	-

Name of the Company/LLP	Current designation of the Director/ Designated Partner	Date of appointment at current designation	Original date of appointment	Date of cessation	Company/LLP Status	Defaulting Status
SURANA FOUNDATIONS LIMITED	Director	14.06.2007	14.06.2007	-	Strike off	-
SURANA POWER LIMITED	Director	19.03.2008	19.03.2008	24.01.2012	Active	

He further submitted that what had been stated by the learned Counsel for the Petitioner cannot at all be accepted in the light of the above details downloaded from the website of the Ministry of Corporate Affairs.

7.Further, he had submitted that Form-12 is relevant which gives particulars at the relevant point of time. The co-accused in C.C.No.3645 of 2015 viz., Accused 2 and 4 have filed Crl.O.P.No.24740 of 2018 seeking to quash the proceedings against them wherein this Court has categorically held that A-2 and A-4 has to face the course of trial and not to invoke extraordinary powers of the High Court under Section 482 Cr.P.C. In a similar case in Crl.O.P.No.21021 of 2018, dated 31.01.2022 this Court had held that what had been submitted by the learned Counsel for the Petitioner can at best be considered as valuable defence of the accused which can be invoked at the time of trial before the learned XIV Metropolitan Magistrate, Fast Track Court No.II, Egmore at Allikulam and not by exercising extraordinary power of the High Court under Section 482 Cr.P.C. Therefore, the learned Counsel for the Respondent/Complainant requested this Court to dismiss this Criminal Original Petition as having no merits.

8.In the light of the orders passed in Crl.O.P.No.24740 of 2018, dated 24.10.2018 and Crl.O.P.No.21021 of 2018, 31.01.2022, the arguments advanced by the learned Counsel for the Petitioner cannot at all be accepted and this Petition cannot be allowed. What had been raised by the Petitioner is treated as valuable defence available to the Petitioner before the trial Court and not to invoke the powers under Section 482 of Cr.P.C. based on the print out taken from the Registrar of Companies which is not an authenticated copy.

9.If this Petition is allowed, it would amount to miscarriage of justice by placing reliance on some copies furnished by the learned Counsel for the Petitioner which is not an authenticated copy. Whether the Petitioner resigned on the date as alleged in the petition which is prior to the date of dishonour of cheque issued by First Accused company and whether the Petitioner herein/A-5 is liable as per the explanation under Section 141 of Negotiable Instruments Act, 1881 need to be considered before the trial Court and not by this Court.

10.In the light of the above discussions, the arguments of the learned Counsel for the Petitioner is rejected and the arguments of the learned Counsel for the Respondent is accepted.

In the result, this Criminal Original Petition is dismissed as having no merits. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

SRM

To:

1. The Metropolitan Magistrate No.XIV,
   Fast Track Court No.2,
   Egmore at Allikulam,
   Chennai - 600 008.

2. The Assistant General Manager,
   UCO Bank,
   Flagship Corporate Branch,
   Mount Road, Chennai-600 006.

+1cc to Mr.R.Selvakumar, Advocate, S.R.No.36991

+1cc to Mr.S.Sundaresan, Advocate, S.R.No.36627

Crl.O.P.No.2226 of 2019

SKM(CO)
UMA(08/07/2022)