IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NOS.21748 TO 21751 OF 2018
AND
CRL.MP.NOS.11906 TO 11909 OF 2018

S.Padmanabhan
Proprietor
Sea Queen Shipping Services (P) Ltd.,
1, Kappali Arunchalapuram, 2nd Street,
Adayar, Chennai – 20. ...Petitioner / Sole Accused in all Crl.O.Ps

Vs.

E.Rajagopalan ...Respondent / Complainant in all Crl.O.Ps

Common Prayer : Criminal Original Petitions have been filed under Section 482 of Criminal Procedure Code to call for the records pertaining to C.C.No.2886 of 2017, C.C.No.2066 of 2017, C.C.No.2067 of 2017 and C.C.No.2885 of 2017 pending on the file of the V Metropolitan Magistrate, Fast Track Court-II, Egmore, At Allikulam, Chennai and quash the same.

For Petitioner in all Crl.O.Ps : Mr.R.Amizhdhu

For Respondent in all Crl.O.Ps : Mr.S.Suresh

COMMON ORDER

The petitioner/Accused facing trial on a private complaint filed by the respondent for the offence under Section 138 of Negotiable Instruments Act in C.C.No.2886 of 2017, C.C.No.2066 of 2017, C.C.No.2067 of 2017 and C.C.No.2885 of 2017 on the file of the V Metropolitan Magistrate, Fast Track Court-II, Egmore, At Allikulam, Chennai, filed these quash petitions.

2.The gist of the complaint is that the petitioner is the sole proprietor of Sea Queen Shipping Services (P) Ltd. The petitioner is acting as a freight clearing and forwarding agent for the goods exported and imported and involved in customs clearance and other shipping services. The respondent came in contact with the petitioner through friends in the year 2008 and thereafter, they became family friends. The petitioner projected that his business is doing well and further, it requires capital investment so that his business can be improved further. The petitioner went to the extent of suggesting the respondent/complainant to become a partner in his business and to share the profits. The petitioner assured the respondent/complainant to give 40% of the profits if he invested in his business. Believing the same, the respondent invested huge sums of money. He made the investment from his retirement funds and LIC funds and earnings. After receipt of the money, the petitioner/accused failed to make the respondent as Director and changed colours. Thereafter, on repeated request by the respondent, in discharge of the liability the petitioner issued several cheques. When the cheques were presented for encashment, the same was not honoured and returned. Thereafter, the respondent/complainant issued statutory notice on 15.02.2017. The petitioner sent a reply dated 04.03.2017 admitting the transactions and stated that he was due only for Rs.25,000/- and enclosed a Demand Draft for Rs.25,000/-. Hence, the respondent/complainant lodged complaint before the learned V Metropolitan Magistrate, Egmore, Fast Track Court-II, Chennai and the same was taken on file in C.C.No.2886 of 2017, C.C.No.2066 of 2017, C.C.No.2067 of 2017 and C.C.No.2885 of 2017.

3.The contention of the petitioner is that the Company M/s.Sea Queen Shipping Services (P) Ltd. was incorporated on 10.05.1993 and the cheques in all cases were issued by M/s.Sea Queen Shipping Services (P) Ltd., signed by its authorised signatory. It is further submitted that the cheques on the face of it would show that the cheques were drawn in the account of the Company. Further, on receipt of the statutory notice, the petitioner sent a detailed reply stating that the cheques were not issued in discharge of any liability and the respondent himself was not sure as to when and for what reason, the loan was availed. It is further submitted that for earlier transaction which took place in the year 2013 cheques were issued to another person and the stale cheques of the year 2013 were misused by the respondent in lodging a false complaint. Further, in this case the respondent failed to array the Company as accused, no notice was sent to the Company, without issuance of statutory notice to the Company and by not making the Company as accused, the petitioner cannot be proceeded with. It is further submitted that the petitioner was arrayed as accused fastening vicarious liability for the Company, invoking Section 141 of the Negotiable Instruments Act. Further the complaint lack basic averments required to invoke Section 141 of the Negotiable Instruments Act.

4.In support of his contentions, the learned counsel for the petitioner relied upon the decisions of the Apex Court in the case of Aneeta Hada vs. Godfather Travels and Tours Private Limited reported in (2012) 5 SCC 661 and Himanshu vs. B.Shivamurthy and another reported in (2019) 3 SCC 797. Further, he relied on the decisions of this Court in the case of Anandhanarayanan vs. K.Harish reported in 2020 SCC Online Mad 16233 and Balasubba Naidu vs. Balakrishna Naicker and others reported in 2020 SCC Online Mad 6568. He further submitted that the consistent view and dictum of the Apex Court is that in the absence of company arrayed as accused, the prosecution of its Directors and erstwhile Directors cannot be proceeded with. It is a precondition to array the Company as an accused. Admittedly in this case, the Company not arrayed as an accused.

5.The learned counsel for the respondent submitted that in the complaint though the Company was not shown as an accused, the petitioner was shown as authorised signatory which would clearly denote that the cheques were issued by the Company. He further submitted that the petitioner not denied the issuance of cheques and not produced any materials to show that the liability of the Company discharged. He would further submit that as could be seen from the return memo it is not the case that the cheques became stale and the petitioner is now taking umbrage on the technical reason. Further, the points raised by the petitioner are factual in nature which are to be decided during trial and not in a quash petition. It is further submitted that the Apex Court in the case of Sheoratan Agarwal and another vs. State of Madhya Pradesh reported in 1984 AIR 1824, wherein it was held that there is no statutory compulsion that the person-in-charge or an officer of the Company may not be prosecuted unless he be ranged alongwith the Company itself. When the complainant is able to show that Directors independently acted at the time of committing the offence, was in-charge and responsible for the conduct of the business of the Company and with whose consent or connivance or neglect attributed for committing the offence, they can be prosecuted with. Further, the Andhra High Court in the case of M.Venkateswara Rao vs. Medarametla Venkateswarlu and others reported in 1992 (3) ALT 468 and the Karnataka High Court in the case of V.N.Samant vs. K.G.N.Traders and another reported in 1994 Cri.L.J. 3115 reiterated the same principle. Further, this Court in the case of Medekar Intisar Mohamed and another vs. Inspector of Police, Egmore Police Station, Chennai and another in Crl.O.P.No.28244 of 2017, held that in case of cheating involving dishonour of cheques, held the role of Directors are to be decided during investigation. Hence, he sought for dismissal of this petition.

6.The learned counsel for the petitioner submitted that the respondent's contention is no more res integra for the reason that the decision in Sheoratan Agarwal's case was considered and overruled by the Apex Court in the case of Aneeta Hada and in view of the same, the decision of the Andhra Pradesh High Court and Karnataka High Court cannot be considered. He further submitted that the other citation referred by the respondent in the case of Medekar Intisar Mohamed is a police case for offence under Section 420 IPC. Hence, the submission of the respondent does not merit consideration.

7.At this juncture, it would be beneficial to refer to the decision of the Apex Court in the case of Aneeta Hada, wherein it was held as follows:

> "58.Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.
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> 59.In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh (supra) which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (supra) is overruled with the qualifier as stated in paragraph 51. The decision in Modi Distillery (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove."

8.Considering the submissions made and on perusal of the materials, it is not in dispute that the Company , viz., M/s.Sea Queen Shipping Services (P) Ltd., was not arrayed as an accused and the cheques were issued by the Company signed by its authorised signatory. In a proceedings under Negotiable Instruments Act the Directors and others of the Company fastened with vicarious liability invoking Section 141 of the Negotiable Instruments Act and in the absence of Company [Principal] being arrayed as accused, the proceedings against others invoking Section 141 of the Negotiable Instruments Act is not sustainable. Added to it, on perusal of the notice and the complaint, it is seen that there is no specific averments against the petitioners who had taken part in the day-to-day affairs of the Company. Hence, it is imperative to array the company as an accused and thereafter, proceed against the Directors and others. Thus, looking from any angle the accused cannot be prosecuted and hence, the complaint against the petitioners is not sustainable.

9.In view of the above, the proceedings in C.C.No.2886 of 2017, C.C.No.2066 of 2017, C.C.No.2067 of 2017 and C.C.No.2885 of 2017 on the file of the V Metropolitan Magistrate, Fast Track Court-II, Egmore, At Allikulam, Chennai are hereby quashed. This Criminal Original Petitions are allowed, accordingly. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The V Metropolitan Magistrate,
Fast Track Court-II,
Egmore, At Allikulam, Chennai

2.The Public Prosecutor,
High Court, Madras.

Crl.O.P.Nos.21748 to 21751 of 2018

PA(CO)
RVM(31/03/2022)