IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.15223 of 2018
and
Crl.MP.No.7720 of 2018

1.Vaikundamani
2.Saraswathi
3.Shakila ... Petitioners/Accused

Vs.

Bakrudeen ... Respondent/Complainant

Prayer : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records culminating in C.C.No.37 of 2018 on the file of the Judicial Magistrate No.1, Panruti and quash the same.

For Petitioners: Ms.S.Sweda
for Mr.Arun Anbumani

For Respondent : Mr.D.Chandrasekar

ORDER

The petitioners/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.37 of 2018 on the file of the learned Judicial Magistrate No.1, Panruti, filed this quash petition.

2.The gist of the complaint is that the respondent and the petitioners are friends, known to each other for several years and the respondent was acting as a commission agent for the petitioners. The first petitioner, who is the authorized person of a Company, viz., M/s.Himaalayaa Agro Tech Limited, to develop his business, on 24.12.2012 sought for a loan of Rs.20,00,000/- for 12% interest and promised to pay back the same by two months. This was in the presence of Jailani and Ramu @ Ramakrishnan. Even though on several occasions the respondent asked for repayment of loan, the petitioners have not repaid the same. Thereafter, on 24.12.2017 in repayment of loan, a cheque was issued for a sum of Rs.20,00,000/- drawn on Axis Bank, Ilanji Branch, bearing Cheque No.007780. When the cheque was presented for encashment on 27.12.2017, it was returned with an endorsement “Account Closed”. Statutory notice was issued on 11.01.2018 to each of the petitioners/accused, in respect of the first petitioner statutory notice was returned for the reason that he left the place, the second petitioner received the notice on 15.01.2016 and the third petitioner refused to receive the notice. Thereafter, a clarification notice issued was issued on 15.01.2018. The petitioners issued a reply notice on 02.02.2018. Since the reply was not proper and was issued for the purpose of evading payment, the respondent lodged a complaint before the learned Judicial Magistrate No.1, Panruti and the same was taken on file in C.C.No.37 of 2018. Hence, the petitioners approached this Court by filing this petition to quash the same.

3.The contention of the petitioners is that the first petitioner was previously a Director in Himaalayaa Agro Tech Limited, a Company incorporated in the year 2011, one Mr.Nagaiah was the Chairman of the Company and few others were working. Due to certain reasons, the Company did not perform well as planned, thereafter the first petitioner stayed away from the business of Himaalayaa Agro Tech Limited and it was managed by others. The second and third petitioners are only the namesake Directors in the Company and they resigned from the Company in the year 2013 itself. The respondent, who was working in the Company, became disgruntled and picked up quarrel with the Company personnel. Thereafter, the respondent joining hands with few of the erstwhile employees, namely, his uncle Mr.Jailani and his friend Mr.Ramu, started giving trouble. The respondent also lodged complaint before the District Crime Branch, Cuddalore, the first petitioner participated in the enquiry and placed all the facts. The respondent misusing the Company's name swindled huge sums of money, he misused the cheque which was actually given to another person for a different purpose and lodged a false complaint. It is further submitted that the statutory notice was bereft of facts, there is nothing to show as to when and where and in what mode, the loan was availed. The second and third petitioners are only namesake Directors, there is nothing in the complaint to show that the petitioners took part in the day-to-day affairs of M/s.Himaalayaa Agro Tech Limited.

4.It is further submitted that the complaint filed under Sections 138 and 142 of Negotiable Instruments Act. Admittedly in the complaint, the Company not arrayed as accused, no notice was sent to the Company and without issuance of statutory notice to the Company and not making the Company as accused, the petitioners cannot be proceeded with. It is further submitted that the petitioners are 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. It is further submitted that the first petitioner hails from a respectable family, now not gainfully employed finding it difficult to make the ends meet. The second and third petitioners are homemakers, the second petitioner got several health issues, the third petitioner is under medical treatment and she is living separately with her family after marriage. Further, the copy of the cheque produced wherein it is seen that the cheque was signed by the authorised signatory for M/s.Himaalayaa Agro Tech Limited confirming that the cheque was issued in discharge of the liability of M/s.Himaalayaa Agro Tech Limited.

5.In support of her contentions, the learned counsel for the petitioners 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, she 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. She 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.

6.The learned counsel for the respondent submitted that in the complaint though the Company was not shown as an accused, the petitioners shown as authorised signatory and Directors of M/s.Himaalayaa Agro Tech Limited which would clearly denote that the cheque was issued by the Company. He further submitted that the petitioners not denied the issuance of cheque and not produced any materials to show that the liability of the Company discharged. Further, the points raised by the petitioners 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.

7.The learned counsel for the petitioners 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. She 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.

8.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."

9.Considering the submissions made and on perusal of the materials, it is not in dispute that the Company, viz., M/s.Himaalayaa Agro Tech Limited was not arrayed as an accused. Further, on perusal of the cheque, it is seen that the cheque was 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.

10.In view of the above, the proceedings in C.C.No.37 of 2018 against the petitioners pending on the file of the learned Judicial Magistrate No.1, Panruti is hereby quashed. This Criminal Original Petition is allowed, accordingly. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

cse

To

1.The Judicial Magistrate No.1,
   Panruti.

+1cc to Mr.D.Chandra Sekar, Advocate SR.No.17586

+1cc to Mr.Arun Anbumani, Advocate SR.No.18495

Crl.O.P.No.15223 of 2018

GPL(CO)
GMY(01/04/2022)