IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.06.2022	Pronounced on : 15.06.2022

Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Original Petition No.11064 of 2019
& Crl.M.P.No.5623 of 2019

1. M/s.FIPOLA Retail India Pvt Ltd.,
   Represented by its Managing Director/CEO,
   Sushil Kanugolu.

2. Saravanan Sundaram, 40 years.
   Director.

3. Susil Kanugolu, 35 years.
   Managing Director/CEO.

4. Kanugolu Venkataramana, 65 years.
   Additional Director.

5. Malakondaiah Maddineni, 60 years
   Additional Director.

All having office at,
'Office No.2B, Door No.AC5,
2nd Floor, 2nd Avenue,
Anna Nagar, Chennai - 600 040. ... Petitioners/Accused 1 to 5

/versus/

M2N Interiors
Represented by its Sole Proprietor,
M.Murali,
Door No.6, Shop No.1,
Venugopal Street, Mogappair,
Chennai - 600 037. ... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records culminated in S.T.C.No.31 of 2019 pending on the file of the Judicial Magistrate-cum-Fast Track Court, Poonamallee and quash the same.

For Petitioners : Mr.E.Om.Prakash, Senior Counsel, for Mr.S.Vijaya Ganesh.

For Respondent : Mr.M.Govindaraju.

O R D E R

M.Murali, Proprietor of M2N Interiors engaged in business of interiors has laid a private complaint under Section 138 of Negotiable Instrument Act against M/s.FIPOLA Retail India Pvt Limited and four others. The Judicial Magistrate-cum-Fast Track Court, Poonamallee, has taken the complaint on its file as S.T.C.No.31 of 2019. The accused 1 to 5 in that complaint are before this Court by way of petition under Section 482 of Cr.P.C., to quash the said complaint.

2. The gist of the complaint is that, the complainant is engaged in carrying on interior business and some of the prestigious firms in Chennai are his clients. The 1st petitioner company approached him for carrying on interiors for their outlets in OMR, ECR, Anna Nagar and distribution center at Kossapur. On the request of the accused persons on behalf of the 1st accused Company, he accepted their request and completed the projects as per the schedule. For the purpose of carrying out the projects and to negotiate the price, meetings were conducted and all the accused persons jointly participated. On finalisation of the terms, 8 purchase orders were issued by the 1st petitioner Company to the respondent.

3. As against the purchase orders for total sum of Rs.1,10,83,125/-; Rs.44,50,000/- was paid in NEFT or through cheques between July 2017 to September 2017. Around Rs.66,36,126/- is balance outstanding amount which the petitioners were liable to pay. Therefore setting apart Rs.14,92,846/- as security deposit, the following four cheques were issued to discharge the liability.

Sl.No.	Dates	Cheque	Amount	Bank
1.	12.02.2018	778641	Rs.12,85,070/-	Axis Bank, Anna Nagar Branch
2.	26.02.2018	778642	Rs.12,85,070/-	Axis Bank, Anna Nagar Branch
3.	12.03.2018	778643	Rs.12,85,070/-	Axis Bank, Anna Nagar Branch
4.	26.03.2018	778644	Rs.12,85,070/-	Axis Bank, Anna Nagar Branch

4. However, when those cheques were presented for collection through HDFC Bank,Vanagaram Branch, Chennai, all the four cheques were returned with an endorsement "Payments stopped

by the drawer". When the petitioners were approached to clear the debt, they gave evasive reply and payment was not forthcoming. Thereafter, on intervention of common friends, the petitioners were requested to represent the cheques and the accused persons promised the cheques will be honoured. But, the said promise was breached. When those cheques were represented again on 10.05.2018, same were again bounced with endorsement "Payments stopped by the drawer". After causing statutory notice, complaint was filed against the 1st Petitioner Company, its Managing Director and Directors.

5. In the complaint, it is alleged that the 3rd accused is the signatory of the cheques and accused 2, 4 & 5 are directly involved in the day-to-day affairs of the 1st petitioner/Company for the conduct of the business of the 1st accused/Company. They all took active part in dealing with the complainant therefore each one of them are responsible for the conduct of the Company and liable to prosecute under Section 138 of Negotiable Instruments Act, 1881.

6. The Learned Senior Counsel appearing for the petitioners would submit that, the cheques were issued only as security for the payment towards the work's contract, which is agreed to be finalised on receipt of the independent auditor's report. Without furnishing certificate of completion and report from the auditor the subject cheques were presented. All the Directors of the Company are arrayed as accused, though the 3rd accused/Susil Kanugolu, Managing Director of the Company alone was looking after the affairs of the Company and signatory of the cheques. The rest of the Directors are Non-Executive Directors and they were not in-charge of day-to-day affairs of the company.

7. Relying upon the Judgement of the Hon'ble Supreme Court in S.M.S.Pharmaceuticals Ltd -v- Netta Bhalla reported in 2005 8 SCC 89, which was subsequently also followed and reiterated by the Hon'ble Supreme Court in National Small Industries Corporation Limited -v- Harmet Singh Paintal and another reported in (2010) 3 SCC 330 submitted that the cheques issued only as security and not for any legally enforceable debt. The cheques signed on behalf of the 1st accused by the 3rd accused. The rest of the accused 2, 4 and 5 who are all non-executive Directors of the Company are neither signatories to the cheques nor person in-charge of the affairs of the Company and therefore, the complaint is liable to be quashed.

8. Per contra, the Learned Counsel for the respondent/complainant submitted that, the cheques were issued only after completion of the work and after much delay in payment. These four cheques were given with specific request to

be presented on the date on which it bears to discharge the debt of Rs.51,40,280/-. All the Directors including the signatory of the cheques were monitoring the work and giving instructions for the execution of the work. The said overt act of the accused persons been specifically mentioned in the complaint itself. Therefore, by inventing an imaginary clause that, final settlement is payable only on receipt of the auditor's report and the cheques were issued only as security is an after thought and not based on any records or terms of contract. Therefore, the petitioners herein are bound to face the trial and discharge the burden of proof.

9. The Learned Counsel appearing for the respondent also submitted that the basic averments which makes out the case against the Directors is sufficient and the power under Section 482 of Cr.P.C., to quash the criminal complaint has to be sparingly exercised and cannot be invoked merely for asking.

10. In response to the above counter, the Learned Senior Counsel appearing for the petitioners refer clause (c) of Terms and Conditions found in the Purchase Orders and state that, the parties agreed for chequered payments, initially 30% along with purchase order, 20% while processing, 30% after completion of the work and balance 20% after certification. Referring the e-mail communications between the parties he submit that, the subject cheques were issued pending certification and not towards the balance payable agreed. Referring the reply notice to the statutory notice he submit that, it has been made clear to the complainant that, the accused 2 &4 are not in-charge of the affairs of the Company and not signatory to the cheques or purchase order and therefore, not liable for any prosecution.

11. In National Small Industries Corporation Limited cited supra, the Hon'ble Supreme Court, after considering the language employed in Section 141 of the Negotiable Instruments Act, 1881, and the provisions of Companies Act, has evolved the following principles:-

> (i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.
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> (ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on

those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make the accused therein vicariously liable for offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

(v) If the accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.

(vi) If the accused is a Director or an officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in the complaint.

(vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases."

12. While enumerating the above principles, the Hon'ble Supreme Court has observed that, merely by stating that, the accused was in-charge of the business of the Company or by stating, he was in-charge of the day-to-day Management of the Company or responsible to the Company for conduct of the business of the Company, cannot be made vicarious liable under

Section 141(1) of Negotiable Instruments Act, 1881. Further made it clear that, for making a person liable under Section 141(2) of the Act, the mechanical repetition of the requirement under Section 141(1) of Negotiable Instruments Act, 1881, will be of no assistance. But, there should be necessary averments in the complaint as to how and in what manner, the accused was guilty of consent, connivance or negligence.

13. In Gunmala Sales Private Limited and another -vs- Navkar Promoters Private Limited and others reported in 2015(1) SCC 104, the Hon'ble Supreme Court has observed as below:-

> "7.2. So far as the decisions cited by the respondents are concerned, all these decisions purported to follow the law laid down in SMS Pharma (1) [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89, which does not lay down any general proposition of law that the specific role of a Director sought to be arrayed as an accused has to be elaborated in the complaint itself.
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> 7.3. The doctrine of "indoor management" would be a relevant factor to be considered while assessing the averments to be made to satisfy the requirements of Section 141 of the NI Act. A complainant to whom a cheque is issued by a company may not be aware of the functions performed by a particular Director in the company. The responsibility of each of the Directors is exclusively the internal management of the company itself. In this connection, it would be useful to refer to Rangachari [N. Rangachari v. BSNL, (2007) 5 SCC 108] and the Delhi High Court's judgment in Shree Raj Travels and Tours Ltd. v. Destination of the World (Subcontinent) (P) Ltd. [Shree Raj Travels and Tours Ltd. v. Destination of the World (Subcontinent) (P) Ltd., (2010) 172 DLT 390].
>
> 7.4. Finally, it must be noted that vicarious liability is contemplated in the NI Act to ensure greater transparency in commercial transactions. This object has to be kept in mind while considering individual cases and hardship arising out of a particular case cannot be the basis for

Directors to try to wriggle out of prosecution. Section 482 of the Code can be invoked where it is clear from documents on record, such as Form 32, that the Director is wrongly arraigned and not in any other case."

14. On perusing the complaint, this Court finds that the complainant has made specific averment that the Directors participated in the meeting to negotiate the terms of contract and at every stage, they enquired about the project and insisted to complete it within the scheduled time.

15. While so, it is contended by some of the accused persons that, they are Non-Executive Directors and not involved in day-to-day affairs of the Company. This is a fact disputed and has to be proved in the course of trial and cannot be decided summarily.

16. The petitioners admit that the cheque was drawn by them and handed over to the respondent-complainant. However, they contend that the cheques were issued only as security for the balance amount, which is liable to pay after certification. If that is so, the petitioners ought not to have given those cheques with specific dates and amounts without certification. After presentation of the cheques and institution of the complaint, the petitioners herein by rely upon the report of auditor dated 16.05.2018 who was apparently appointed by the petitioners herein try to make out the defence.

17. As rightly pointed out by the Learned Counsel for the respondent, the power of the Hon'ble Court under Section 482 of Cr.P.C., to quash the criminal complaint has to be exercised sparingly with, circumspection and not on the mere asking. We cannot conduct mini-trial or roving enquiry. From the dates and events, admittedly the cheques were drawn and handed over to the respondent much prior to the appointment of the so called independent Auditor and receipt of his report. After issuing the cheque for specific amount with date, the petitioners are attempt to make out a case that the cheques were not issued for the liability but only as a security and the liability are facts to be tested in trial much less than the cheque amount and not summarily by exercising Section 482 of Cr.P.C.

18. For the aforesaid reasons, this Court is of the view that the petitioners herein are liable to face the trial and prove their innocence. The power of the High Court under Section 482 of Cr.P.C., to quash the complaint cannot be exercised, in the case, where the complaint speaks about the

participation of the accused persons and issuance of cheques for enforceable debt. Hence, this Criminal Original Petition No.11064 of 2019 is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bsm

To,

The Judicial Magistrate-cum-Fast Track Court, Poonamalee.

+1cc to Mr.M.Govindaraju, Advocate, S.R.No.35458
+1cc to Mr.S.Vijaya Ganesh., Advocate, S.R.No.35486

Crl.O.P.No.11064 of 2019
& Crl.M.P.No.5623 of 2019

PL(CO)
CT/24/06/2022