IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2022

CORAM

THE HON'BLE MS.JUSTICE R.N.MANJULA

CRL.O.P.NOS.16308, 16310, 16311 AND 16313 OF 2021
AND CMP NOS.8871, 8874, 8876 AND 8881 OF 2021

Sridhar Kumaraswamy ... Petitioner
in all Crl.O.Ps'

VS.

1.Usha A Mehta
Represented by her Power of Attorney
Udit A. Mehta

2.J.S.Mehta (HUF)
Represented by its Karta
Udit A. Mehta ... Respondents 1&2
in all Crl.O.Ps'

PRAYER: Criminal Original Petitions filed under Section 482 of Criminal Procedure Code, with a prayer to call for the records culminating in S.T.C.Nos.40, 39, 41 and 42 of 2020 respectively, pending on the file of the learned Fast Track Court, Magistrate Level at Ambattur, quash the same in so far as the petitioner is concerned.

For Petitioner (in all Crl.O.Ps') : Mr.A.Arun Anbumani

For Respondents 1 & 2 in all Crl.O.Ps': Mr.R.Muthukumar

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in S.T.C.Nos.40, 39, 41 and 42 of 2020 respectively, pending on the file of the learned Fast Track Judge, Fast Track Court, Magistrate Level, Ambattur.

2. The respondents are the owner of the property situated at Kasturibai Nagar, Adyar, Chennai, which comprises the built up area at the ground and first floor measuring together 3418 sq.ft and 2666 sq.ft. respectively. The said property was rented out to the accused for a monthly rent of Rs.6,50,537/-. The rental advance for the said property is Rs.55,93,000/-. The rent was being paid as agreed till the month of March 2019 and thereafter, the rents were not paid fully and there were arrears of rent. Towards the arrears of rent, four cheques were issued by the first accused in favour of the first respondent during 2019. The details of the cheques corresponding to the complaints filed by the respondents are tabulated as below:

S.No.	*Case No.*	*Cheque No. and Date*	*Alleged rental due for the month of*
1	*S.T.C.No.39 of 2020*	*631970 dated 30.11.2019*	*October 2019*
2	*S.T.C.No.40 of 2020*	*631969 dated 30.10.2019*	*September 2019*
3	*S.T.C.No.41 of 2020*	*631975 dated 16.12.2019*	*May 2019*
4	*S.T.C.No.42 of 2020*	*631974 dated 16.12.2019*	*April 2019*

2.1. When the cheques were presented for collection by the first respondent, they were returned for the reason of "*funds insufficient*". By making allegation that the petitioner has committed the offence under Section 138 of the Negotiable Instruments Act, 1881, the respondents herein have filed the above four complaints.

3. The petitioner is the third accused and the Company M/s.Krishnakumar Hospitality Private Limited is the first accused and Mrs.K.Rajkumari, who signed the cheques is the second accused. The third accused, who is the petitioner herein has also been arrayed as one of the Directors of the said company.

4. The learned counsel for the petitioner submitted that so as far as the petitioner is concerned, he is only a non-executive Director and he did not have any role, charge or responsibility whatsoever in the Company. He never participated in the conduct of the business or administration of the day today affairs of the Company at any point of time. The petitioner, is a Non-Resident Indian (NRI) living in Netherlands. Since he is working in Netherlands, he has been living there for several years.

4.1. The second accused Mrs.K.Rajkumari is the sister of the petitioner. She got married to one M.S.Krishnakumar, who is a restaurateur, who was running chain of restaurants in Dubai. During the year 2013, the said M.S.Krishnakumar and his partners started a restaurant in Nungambakkam, Chennai under the name and style "Krishnavilasam". The restaurant became famous in Chennai. During February 2015, the second accused Mrs.Rajkumari and her husband M.S.Krishnakumar, came back to India to take care of the business. They had also plans to start a restaurant at Adyar, Chennai, by taking a premises on monthly rent. Unfortunately, M.S.Krishnakumar died in a road accident on 11.06.2015 and thereafter, the life of the petitioner's sister got shattered.

4.2. Since the petitioner's sister was under compelling circumstances to do appropriate arrangements to take over and continue the business left by her deceased husband, she approached the petitioner to be a Director for the purpose of satisfying the legal requirement for incorporating a private limited company in India. So the petitioner lent his name to be the Director of the company; but he did not play any role, take any charge or responsibility in the conduct of the business.

4.3. The petitioner continues to live in Netherlands and he is only a non-executive Director. The petitioner never signed any papers, documents, deeds or rental receipt of the company excepting the papers, mandatory requirements to comply the legal formalities. Unless the Director is arrayed as an accused or he is in-charge or responsible to the affairs of the company or the conduct of the business, no liability can be fastened upon him. It was not specifically stated as to how and in which manner, the petitioner was responsible for the conduct of the business of the company.

5. The law on the above point has been well settled that while prosecuting the company for the offence under Section 138 of the Negotiable Instruments Act, 1881, all the Directors of the company need not be impleaded as parties unless they are directly in-charge of the affairs of the company.

6. In support of the above contention, the learned counsel for the petitioner relied on the following judgments:-

(i) Judgment of the Hon'ble Supreme Court in ***S.M.S.PHARMACEUTICALS LTD. VS. NEETA BHALLA AND ANOTHER [2005 (8) SCC 89]***

(ii) Judgment of the Hon'ble Supreme Court in ***POOJA RAVINDER DEVIDASANI VS. STATE OF MAHARASHTRA AND ANOTHER [2014 (16) SCC 1]***

(iii) Judgment of this Court in ***ARVIND SIVAKUMARAN VS. RAJKUMAR JAIN [2020 (3) MWN (Cr.) DCC 106 (Mad.)]***

(iv) Judgment of this Court in

Y.G.RAJENDRAN VS. MOLLY ABRAHAM [2020 (3) MWN (Cr.) DCC 85 (Mad.)]

(v) Judgment of the Hon'ble Supreme Court in ***K.L.E.SOCIETY AND OTHERS VS. SIDDALINGESH [2008 (4) SCC 541]***

(vi) Judgment of this Court in ***MAHESWARI VS. JAYANTHI [2011 (3) MWN (Cr.) 319]***

(vii) Judgment of this Court in ***T.RAVI VS. T.KAMAKSHI [CRL.O.P.NO.9919 OF 2019 DECIDED ON 11.04.2019]***

(viii) Judgment of this Court in ***M/S.KOUSHIC PRESSURE VESSELS PVT. LTD. VS. A.S.SANDEEP [CRL.O.P.NO.11940 OF 2020 DECIDED ON 08.09.2020]***

7. On a perusal of the complaint, it is seen that the second accused, who is the sister of the petitioner has signed the impugned cheques on behalf of the company. Since the petitioner is residing at Netherlands and he has his avocation also at Netherlands, it is not possible for the petitioner to manage the affairs of the company which is in India.

Naturally, the second accused, who is the sister of the petitioner would have been directly in-charge of the affairs of the company and only for that reason, she had signed the impugned cheques. In the complaint, it has not been specifically stated as to how the petitioner is in-charge of any of the affairs of the company and hence, he is directly responsible for the transactions involved in the cheques.

8. In Section 141 of the Negotiable Instruments Act, 1881, it has been clearly stated that the person who is in-charge or responsible for the company and conduct of the business of the company alone shall be deemed to be guilty of the offence.

9. For the sake of convenience, Section 141 of the Negotiable Instruments Act, 1881, is extracted hereunder:

> ***" [141 Offences by companies. —***
>
> *(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business*

of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such

director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

10. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court in ***S.M.S.PHARMACEUTICALS LIMITED VS. NEETA BHALLA AND ANOTHER [2005 (8) SCC 89]*** wherein it is held as under:

"In view of the above discussion, our answers to the questions posed in the Reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section

141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that 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.

(c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these

persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."

11. The other judgments as cited by the learned counsel for the petitioner on the above point has been either asserted or followed. The respondents have not given any materials or details which might show the manner in which the petitioner is responsible for the conduct of the business of the first accused company. Hence it is not appropriate to implead the petitioner as a party to these proceedings. Neither the averments in the complaint nor the materials produced by the respondents would show that the petitioner is also in-charge or responsible for the affairs of the company. Since the petitioner is a namesake Director who is living abroad due to his occupation and who is not in charge and responsible to the conduct of the business or the affairs of the company, I feel the proceedings as against the petitioner is liable to be quashed.

12. In the result, these Criminal Original Petitions are allowed and the proceedings in S.T.C.Nos.40, 39, 41 and 42 of 2020 respectively, pending on the file of the learned Fast Track Judge, Fast Track Court, Magistrate Level at Ambattur, are quashed as against the petitioner. Consequently, connected miscellaneous petitions are closed.

09.11.2022

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
TK

To

1.The Fast Track Judge
Fast Track Court
Magistrate Level at Ambattur.

2.The Public Prosecutor
High Court of Madras
Chennai.

R.N.MANJULA, J.

TK

CRL.O.P.NOS.16308, 16310, 16311
AND 16313 OF 2021

09.11.2022