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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved On: 12.04.2022

Order Delivered On: 20.04.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.No.19564 of 2019

and Crl.M.P.No.10014 of 2019

Saffron International
Represented by its Partner

1. S.Tamilarasi

2.C.Senthilnathan

... Petitioners/Accused

Vs.

Arun Mishra
Business Co-ordinator of Singhtex
Co. Ltd.,
Represented by his power of Attorney
Holder Pa.Ravichandiran.

... Respondent/Complainant

PRAYER: Criminal Original petition has been filed under Section 482 of Cr.P.C, prayed to call for the entire records pertaining to STC No.569 of 2018 on the file of the Judicial Magistrate, Fast Track Court No.II, Erode and to quash the same insofar as the Petitioners are concerned.

For Petitioners	: Mr.C.E.Pratap
For Respondent	: Mr.M.Karthik for Mr.I.C.Vasudevan

ORDER

The learned Counsel for the Petitioners submitted that the Petitioners are the Accused before the Court of the learned Judicial Magistrate, Fast Track Court No.II, Erode and he had filed this petition seeking to quash the case in STC No.569 of 2018.

2. As per the submission of the learned Counsel for the



Petitioners, notice was not served on the Directors/Partners of the Company and the notice was served only on the Company/Firm. The learned Counsel for the Petitioners seeks to quash the complaint on the ground that the statutory notice was not issued each of the Directors/Partners of the Company.

2-A. The learned Counsel for the Petitioners invited the attention of this Court to the reported ruling of the Hon'ble Madras High Court in II (2007) BC 499, 2006 CriLJ 4552, 2007 (1) KLT 106 in the case of Mr.B.Raman, Mr.B.Ramesh And Mr.... Vs. Shasun Chemicals and Drugs Ltd., particularly Paragraph Nos.36 to 38 of the Judgment which read as follows:

"36. Under the circumstances, the prosecution against the petitioners/directors is not maintainable and, as such, the proceedings against them are liable to be quashed.

37. In the light of what is stated above, the answer to the question is, statutory notice to every person, including the director, who is sought to be prosecuted, is mandatory.

38. We record our appreciation for the services rendered by Mr.E.Raja, Amicus Curiae, and also direct Tamil Nadu State Legal Services Authority to pay a remuneration of Rs.5,000/- to him."

3. The learned Counsel for the Respondent/Complainant objected to the line of the argument of the learned Counsel for the Petitioners and submitted that it is a fit case to consider the valuable defence of the Accused before the trial Court during the trial and exercising discretion under Section 482 of Cr.P.C., will result in miscarriage of justice.

3-A. The learned Counsel for the second Respondent/defacto complainant relied on the ruling of the Hon'ble Supreme Court in Indian Kanoon-<http://indiankanoon.org/doc/95530131> in the case of Kirshna Texport & Capital Markets Ltd Vs. Ila A.Agarwal & Ors, particularly in Paragraph No.14 of the Judgment which read as follows:

"14. Section 141 states that if the person committing an offence under Section 138 is a Company, every director of such Company who was in charge of and responsible to that Company for conduct of its business shall also be deemed to be guilty. The reason for creating vicarious liability is plainly that a juristic entity i.e.



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a Company would be run by living persons who are in charge of its affairs and who guide the actions of that Company and that if such juristic entity is guilty, those who were so responsible for its affairs and who guided actions of such juristic entity must be held responsible and ought to be proceeded against. Section 141 again does not lay down any requirement that in such eventuality the directors must individually be issued separate notices under Section 138. The persons who are in charge of the affairs of the Company and running its affairs must naturally be aware of the notice of demand under Section 138 of the Act issued to such Company. It is precisely for this reason that no notice is additionally contemplated to be given to such directors. The opportunity to the 'drawer' Company is considered good enough for those who are in charge of the affairs of such Company. If it is their case that the offence was committed without their knowledge or that they had exercised due diligence to prevent such commission, it would be a matter of defence to be considered at the appropriate stage in the trial and certainly not at the stage of notice under Section 138."

4. On consideration of rival submissions, it is found that there is no proof regarding the service of notice on the individuals/Partners of the Firm. Therefore, the claim of the Petitioners that statutory notice is found to be defective cannot be accepted in the light of the reported decision of Hon'ble Supreme Court stating that the statutory notice to each of the Directors of the Firm/Company is not mandatory/necessary, if it is found that statutory notice was served on Company. When that be the case, the complaint cannot be taken cognizance by the learned Judicial Magistrate.

5. On perusal of the records and in the facts and circumstances of this case, it is found that the submission of the learned Counsel for the Petitioners is not found acceptable in the light of the reported ruling of the Hon'ble Supreme Court in Indian Kanoon-<http://indiankanoon.org/doc/95530131> in the case of Kirshna Texport & Capital Markets Ltd Vs. Ila A. Agarwal & Ors. Therefore, when the notice under Section 138 of Negotiable Instruments Act need not be served on each of the Directors/Partners of the Company, individually. Still the complaint under Section 138 of Negotiable Instruments Act is maintainable. When the individuals who are in Management of the Firm/Company had not been served individually, still the notice



is to be treated as statutory notice, if it is served on the Company/Firm. In this case, the first Petitioners had not signed the cheque, the second Petitioners had only signed the cheque and the first and second Petitioners were not issued notice under Section 138 of Negotiable Instruments Act. Under those circumstances, the statutory notice is not found to be defective in the light of the ruling of the Hon'ble Supreme Court in Indian Kanoon-<http://indiankanoon.org/doc/95530131> in the case of Kirshna Texport & Capital Markets Ltd Vs. Ila A.Agarwal & Ors. Also in the light of the above Judgment of the Hon'ble Supreme Court in Indian Kanoon-<http://indiankanoon.org/doc/95530131> in the case of Kirshna Texport & Capital Markets Ltd Vs. Ila A.Agarwal & Ors and the Judgment of the Division Bench of this Court in II (2007) BC 499, 2006 CriLJ 4552, 2007 (1) KLT 106 in the case of Mr.B.Raman, Mr.B.Ramesh And Mr.... Vs. Shasun Chemicals and Drugs Ltd., is considered can no longer be relied upon. Hence, the argument of the learned Counsel for the Petitioners is rejected.

In the light of the above discussion, this Criminal Original Petition is dismissed. The learned Judicial Magistrate, Fast Track Court No.II, Erode is directed to dispose of the case within a reasonable period of three months from the date of receipt of a copy of this Order. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dh

To

1. The Judicial Magistrate, Fast Track Court No.II, Erode

+1cc to Mr.I.C.Vasudevan, Advocate, S.R.No.27774

+1cc to Mr.C.E.Pratap, Advocate, S.R.No.27344

CrI.O.P.No.19564 of 2019

SSD(CO)

CT 12/05/2022