IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **06.12.2022**

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.32639 of 2019
and Crl.M.P. Nos.18000 & 18001 of 2019

1. M/s. Innokon Laboratories Pvt. Ltd.,
   Rep. by its Managing Director,
   N.Sivakumar

2. Nantheeswaran Siva Kumar
3. Ganesh Monian
4. Arugaperumal Subramania Pillai
5. Sathiyapaul Jeyagopal
6. Arumugaperumal Pillai Thamburan Thozha Pillai
7. Ramanatha Pillai Kolappa Pillai
8. Srihari ... Petitioners

Vs.

M/s. Health House,
Represented by its Proprietor,
Viyash Perumal ... Respondent

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the proceedings in C.C. No.269 of 2019 pending on the file of the Fast Track Court, Alandur, Chennai and quash the same.

For Petitioners : Mr.S.Santhan

For Respondent : Mr. R.Alvin Manoj Raj

ORDER

This Criminal Original Petition has been filed to call for the records pertaining to the proceedings in C.C. No.269 of 2019 pending on the file of the Fast Track Court, Alandur, Chennai and quash the same.

2. The petitioners are the accused 1,2,3,6,7,8,9 and 10. The respondent has given a complaint on the allegation that the cheque issued by the first accused for discharge of an amount due has been returned as "Funds insufficient". So the complaint has been given for the offences under Section 138 r/w. 142 of Negotiable Instruments Act.

3. The learned counsel for the petitioners submitted that the petitioners have been unnecessarily impleaded in the case without alleging how they are responsible for the affairs of the company; the second and third petitioners alone are the authorised signatories of the first petitioner company and the rest of the petitioners are Directors and Additional Directors of the Company, but they have been arrayed as parties to the

proceedings. In support of his above contention, the learned counsel for the petitioners cited the following decisions of the Hon'ble Supreme Court:

i) ***S.M.S.Pharmaceuticals Ltd., Vs. Neeta Bhalla and Another*** reported in ***(2005) 8 SCC 89***.

ii) ***Saroj Kumar Poddar Vs. State (NCT of Delhi) and another*** reported in ***(2007) 3 SCC 693***.

4. The learned counsel for the respondent submitted that all the petitioners are the Directors and Additional Directors of the first petitioner company and only in their individual capacity they have been impleaded as party to the proceedings.

5. On perusal of the complaint it is seen that the names of the Directors have been repeated in the cause title. It is seen that the accused 2 and 11, 3 and 12, 10 and 13 are one and the same persons. The cheque has been issued by the first respondent company for the medicines supplied on credit basis by the respondent. After closure of the trade, there was a settlement and in which the first accused had undertaken to settle a sum of Rs.27,78,567/- and the said amount was agreed to be paid in two payments.

The first payment was made for a sum of Rs.15,35,209/- which was issued through three cheques. The final payment was made for a sum of Rs.12,43,358/- and for that a cheque was issued on 27.05.2019 drawn from Karur Vysya Bank.

6. The averments of the complaint does not disclose in what manner the accused 2 and 3 are responsible for day-to-day affairs of the company. It is to be noted that since the cheque has been issued by the company, the primary liability is on the company. Since the company is a juristic person who does not have its own hands to function, it has to run through its Directors or other persons who are at the helm of its affairs. Since the principal is the company and for whose default its Directors are liable, it should be proved whether the Directors have knowledge about the issuance of the cheques for any discharge or liability.

7. In this regard it is relevant to cite the decision of the Supreme Court made in ***S.M.S.Pharmaceuticals Ltd., Vs. Neeta Bhalla and Another*** (cited supra) and ***Saroj Kumar Poddar Vs. State (NCT of Delhi) and another*** (cited supra). In the said judgment it is held that before issuing process in

cases of this nature, the Magistrate has to apply his mind to see whether the complaint contains material allegations to proceed against all the accused. If the complaint does not have any details as to how the liability is fastened, all the Directors or the Additional Directors even though they are not directly in charge of the affairs of the company and responsible for the conduct of its business, the process shall not be issued to all the accused. In ***S.M.S.Pharmaceuticals Ltd's case*** the dictum has been laid as follows:

> *"... 18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being*

described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial."

19. 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 the question posed in sub-para (b) has to be in the 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 the 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 the 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 the 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 the 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."

8. In the case on hand none of the material facts have been stated why all the accused should be arrayed as parties for the default committed by the company and for whose liability the impugned cheque has been issued. Except the second and third accused who are the signatories of the cheque and who by their action has got knowledge about the issuance of the cheque and directly in charge of the affairs of the company, other accused

are unnecessary parties. So I feel it is appropriate to quash the proceedings as against the petitioners 4 to 8.

9. In view of the above stated reasons, this Criminal Original Petition is partly allowed and the proceedings in C.C. No.269 of 2019 on the file of the Fast Track Court, Alandur, Chennai is quashed as against the petitioners 4 to 8 only. Connected miscellaneous petitions are closed.

06.12.2022

Index : Yes/No
Speaking Order : Yes / No

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To:

1. The Fast Track Court,
   Alandur, Chennai

R.N.MANJULA, J.,

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