BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 04.02.2022
PRONOUNCED ON : 21.04.2022
CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.8757 of 2019
and
Crl.M.P.(MD)No.5519 of 2019

1.P.Saravanan
2.Aruna Parthipan : Petitioners/Accused 3 and 4

Vs.

V.Mahalakshmi : Respondent/Complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records in S.T.C.No.368 of 2018, on the file of the Judicial Magistrate Court No.II (Fast Track Court at Magistrate Level), Madurai and quash the same.

For Petitioners : Mr.N.Ananthapadmanabhan
for M/s APN Law Associates

For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in S.T.C.No.368 of 2018, pending on the file of the Court of Judicial Magistrate No.II, Fast Track Court (Magisterial Level), Madurai and quash the same.

2. The petitioners are the accused 3 and 4 in S.T.C.NO.368 of 2018, on the file of the Court of Judicial Magistrate No.II, Madurai. The respondent/complainant has filed a private complaint under Section 200 Cr.P.C., against four persons including the petitioners herein for the offence under Section 138 r/w 142 N.I., Act. Admittedly, the first accused is a partnership firm in which the second accused is its Managing Partner and the accused 3 and 4 - the petitioners herein are the partners of the first accused firm.

3. The case of the respondent/complainant is that the second accused had approached the complainant through one Madhavan, Power Agent of the complainant who is a cousin to him as well as the close relative to the complainant, in the first week of July 2017 and demanded Rs.40,00,000/- for their electrical contract business in

the Southern Railway, that the second accused had borrowed Rs.40,00,000/- from the complainant on behalf of the first accused on 20.08.2017 agreeing to repay the said amount with minimum interest within six months after getting payment from their contract business, that the accused did not repay the debt amount as promised even after lapse of six months period, and after repeated demands, the accused had issued two cheques bearing Nos.782337 and 782338 for Rs.20,00,000/- each dated 20.07.2018 and 23.07.2018 respectively drawn on Bank of Andhra, Madurai Branch on 12.07.2018 at the residence of the complainant towards the settlement of the above loan, that the complainant had presented the two cheques for collection through her ICICI Bank, K.K.Nagar Branch, that both the cheques were returned with an endorsement as account closed, that the complainant has then sent a legal notice dated 04.08.2018 to the accused demanding the payment of the amount covered by the cheques, that all the accused had received the notice and issued a reply notice with false and incorrect particulars and that since the accused have not chosen to pay any amount, the complainant was constrained to lodge the above complaint.

4. The main contention of the petitioners is that even in the statutory notice as well as in the complaint, the complainant has alleged that the second accused alone was the person involved in the transaction directly as well as indirectly, that the entire complaint does not reveal any participation or any other role in the day-to-day management of the affairs of the firm by the petitioners or that the petitioners were instrumental for the loan amount transacted between the second accused and the respondent and that in the absence of any direct or indirect allegations with regard to the petitioners in respect of the management of the affairs of the firm or about the loan transactions itself, implicating them as accused in the above case for the offence under Section 138 of the Negotiable Instruments Act, is absolutely illegal and the very taking cognizance of the case as against the petitioners is also illegal.

5. Before entering into further discussion, it is necessary to refer the decisions relied on by the learned Counsel for the petitioners:

(i) In ***Mannalal Chamaria and another Vs State of West Bengal and another*** reported in ***AIR 2014 Supreme Court 2240***, wherein the Hon'ble Apex Court held as follows:

> "*9. The law on the subject is now very well-settled by a series of decisions rendered by this Court and it is not necessary to repeat the views expressed time and again. Suffice it to say, that the law has once again been stated in <u>A.K.Singhania vs. Gujarat State Fertilizer Company Ltd</u>.[1] to the effect that it is necessary for a complainant to state in the complaint that the person*

accused was in charge of and responsible for the conduct of the business of the company. Although, no particular form for making such an allegation is prescribed, and it may not be necessary to reproduce the language of Section 138 of the Negotiable Instruments Act, 1881, but a reading of the complaint should show that the substance of the accusation discloses that the accused person was in charge of and responsible for the conduct of the business of the company at the relevant time. From the averment made in the complaint, which is reproduced above, it can safely be said that there is no specific or even a general allegation made against the appellants."

(ii) In ***Pooja Ravinder Devidasani Vs. State of Maharashtra and another*** reported in ***AIR 2015 Supreme Court 675***, the Hon'ble Supreme Court has held as follows:

"28. In the entire complaint, neither the role of the appellant in the affairs of the Company was explained nor in what manner the appellant is responsible for the conduct of business of the Company, was explained. From the record it appears that the trade finance facility was extended by the Respondent No. 2 to the default Company during the period from 13th April, 2008 to 14th October, 2008, against which the Cheques were issued by the Company which stood dishonored. Much before that on 17th December, 2005 the appellant resigned from the Board of Directors. Hence, we have no hesitation to hold that continuation of the criminal proceedings against the appellant under Section 138 read with Section 141 of the N.I. Act is a pure abuse of process of law and it has to be interdicted at the threshold.

30. Putting the criminal law into motion is not a matter of course. To settle the scores between the parties which are more in the nature of a civil dispute, the parties cannot be permitted to put the criminal law into motion and Courts cannot be a mere spectator to it. Before a Magistrate taking cognizance of an offence under Section 138/141 of the N.I. Act, making a person vicariously liable has to ensure strict compliance of the statutory requirements. The Superior Courts should maintain purity in the administration of Justice and should not allow abuse of the process of the Court. The High Court ought to have quashed the complaint against the appellant which is nothing but a pure abuse of process of law. "

6. It is also necessary to refer the judgment of the Hon'ble Supreme Court in ***Monaben Ketanbhai Shah & another VS State Of Gujarat and Others in Crl.A.No.850 of 2004, dated 10.08.2004*** and the relevant passage is extracted hereunder:

> *"Section 141 does not make all partners liable for the offence. The criminal liability has been fastened on those who, at the time of the commission of the offence, was in charge of and was responsible to the firm for the conduct of the business of the firm. These may be sleeping partners who are not required to take any part in the business of the firm; they may be ladies and others who may not know anything about the business of the firm. The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when first the complainant makes necessary averments in the complaint and establishes that fact. The present case is of total absence of requisite averments in the complaint."*

7. In **Smt. Katta Sujatha vs Fertilizers & Chemicals, Travancore**, reported in ***(2002)7 SCC 655***, the Hon'ble Supreme Court, by holding, that since it was not stated in the complaint that the accused was in-charge of the business and responsible for the conduct of the business of the firm, nor was there any other allegation that she had connived with any other partner in the matter of issue of cheque, has quashed the complaint.

8. The above decisions are squarely applicable to the case on hand. In paragraph No.4 of the complaint, it has been stated that the accused 3 and 4 are the partners of the first accused firm and thereafter, in paragraph No.11 of the complaint, it has been stated that the accused 1 to 4 are jointly and severally liable to pay the dishonoured cheque amount to the complainant. Except the above two sentences, the complainant has nowhere whispered about the role played by the petitioners herein.

9. As rightly pointed out by the learned Counsel for the petitioners, the complainant has specifically alleged that the second accused alone had borrowed the amount and issued the cheques and moreover, it has been specifically stated in paragraph No.5 of the complaint, that the second accused being the Managing Partner, is looking after the day-to-day affairs of the said firm and dealing with the bank transactions in respect of the first accused firm.

10. No doubt, though it is not necessary to reproduce the language of Sections 138 and 141 of N.I., Act, a reading of the complaint should show that the substance of the accusation discloses that the petitioners were in charge of and responsible for the

conduct of the business of the first accused firm. But as already pointed out, perusal of the complaint would reveal that there is no specific or even a general allegation made against the petitioners herein.

11. Considering the above, this Court has no hesitation to hold that the filing of the complaint and taking cognizance of the case against the petitioners would amount to abuse of process of law and as such, this is a fit case for quashing the complaint as against the petitioners.

12. In the result, the Criminal Original Petition is allowed and the proceedings pending against the petitioners in S.T.C.No.368 of 2018, on the file of the Judicial Magistrate Court No.II (Fast Track Court at Magistrate Level), Madurai is quashed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Judicial Magistrate Court No.II
(Fast Track Court at Magistrate Level),
Madurai.

Crl.O.P.(MD)No.8757 of 2019
Date:21.04.2022

SA(25.05.2022) 5P 2C