BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT

DATED: 05.04.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.14732 of 2020

and

Crl.M.P(MD)No.6957 of 2020

1.Nagalakshmi
2.R.Prasanna Venkatesan
... Petitioners/Accused Nos.5 & 6

Vs.

S.Thirumalai Samandi ... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records from the learned Judicial Magistrate No.VI (Fast Track Court-Magistrate Level), Madurai in S.T.C.No.46 of 2018 and quash the same as it has no prima facie case against the petitioners.

For Petitioners : Mr.H.Velvadhas

For Respondent : Mr.N.Ananthapadmanaban
for M/s.APN.Law Associates

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.46 of 2018 on the file of the learned Judicial Magistrate No.VI (Fast Track Court-Magistrate Level), Madurai, as against the petitioners.

2.The respondent herein lodged a complaint for the offence punishable under Section 138 of the Negotiable Instruments Act alleging that on 20.01.2015, the first accused, which is a partnership firm, borrowed a sum of Rs.10,00,000/- as loan. Totally five persons are partners in the first accused firm and in order to repay the said loan, they issued cheques on behalf of the firm. Two cheques were presented for collection and both were returned dishonoured with an endorsement 'present in proper zone'. After causing statutory notice, the respondent initiated proceedings under Section 138 of the Negotiable Instruments Act.

3.There are totally six accused, in which the petitioners are arraigned as Accused Nos. 5 and 6.

4.The learned counsel appearing for the petitioners would submit that the petitioners were already quitted from the partnership firm even at the time of alleged borrowal of loan namely on 20.01.2015. As per Section 141 of the Negotiable Instruments Act, only the partners are liable to be punished for the offence under Section 138 of the Negotiable Instruments Act, when the cheques were issued by the partnership firm. Even according to the respondent, the partnership firm borrowed loan of Rs.10,00,000/- on 20.01.2015 and even before the said borrowal, the petitioners quitted from the partnership firm and as such, they are no way response for the issuance of the alleged cheques. The cheques were issued on 15.07.2017 and 01.08.2017 for the sum of Rs.5,00,000/- each. Even at the time of borrowal of loan, the petitioners were not the partners and at the time of issuance of cheques also they are not the partners of the first accused firm.

5.In support of his contention, he also relied upon the Judgment of the Honourable Supreme Court of India in the case of ***Ashok Mal Bafna Vs. M/s Upper India Steel Mfg & Engg Co. Ltd*** reported in ***2017 SCC Online SC 705***, wherein the Honourable Supreme Court of India held as follows:

> "Interpreting the provisions of Section 141 this Court in National Small Industries Corporation v. Harmeet Singh Paintal & Anr. (2010) 3 SCC 330 observed that Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the Company for the conduct of business of the Company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner the accused was in charge of or was responsible to the Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes especially where such statutes create vicarious liability.
> 10. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs

> of the Company and in charge of and responsible for the conduct of the business at the time of commission of an offence will be liable for criminal action [See : Pooja Ravinder Devidasani v. State of Maharashtra & Ors. AIR 2015 SC 675].
>
> The law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company. In the above judgments, the Hon'ble Supreme Court of India repeatedly held that the complaint has to specifically say as to how and in what manner Director was responsible for the conduct of the business of the company. Unfortunately in the impugned complaint, the allegations did not satisfy the requirements of Section 141 of NI Act. That apart, the petitioner is being implicated as third accused who is inducted as Non Executive Director of the first accused company, therefore the petitioner is not being made responsible for the day to day affairs of the company and she cannot be held liable vicariously for the offence committed by the company. Therefore, in order to secure ends of justice and to prevent the abuse of process of court, this Court has to necessarily interfere with the proceedings in exercise of its jurisdiction under Section 482 of Cr.P.C."

6.The learned counsel appearing for the respondent would submit that all the partners are family members. The first accused is a firm and A.2 to A.6 are partners of the first accused firm which is a registered partnership firm in the name and style of 'Sun Coir Mat'. The second accused is the Managing partner with a mandate and authority of other accused herein to deal with the every day management and financial committee. A3 is the mother of A.2, A.4 is the wife of A.2, A.5 is the mother of A.4 as well as mother-in-law of A.2 and A.6 is the brother of A.4 and brother-in-law of A.2. All the accused persons are directly engaged in the day to day activities of the firs accused firm such as manufacturing process, supervision of the work in progress, maintenance of the accounts and stock, purchase of raw materials etc. A.5 and A.6 are looking after marketing of the products. Thus, all the accused are actively involved in the contact of the business of the firm. While being so, the complainant, who is a close relative of all A.2 and A.3, and all the accused represented to the respondent that for the purpose of improvement of business, they required additional amount to the tune of Rs.50,00,000/- and assured that it will be repaid with interest at the rate of 1% per month. On 20.01.2015 all the accused came to the respondent's residence and received the sum of Rs.10,00,000/- as loan and assured to repay the same. Therefore, the petitioners are actively involved in the day to day activities of the first accused firm and they also requested the respondent to lend money. Further, the grounds raised by the petitioners have to be gone into by full fledged trial before the trial Court and documents produced by them has to be tested before the trial Court.

7.In support of his contention, he relied upon the Judgment of the Honourable Supreme Court of India in the case of ***Tamil Nadu News Print and Papers Limited Vs. D.Karunakar and others*** reported in ***2016 (6) SCC 78***, in which, the Honourable Supreme Court of India held that simply because someone is a Director in a company, he cannot be held responsible in respect of a cheque issued on behalf of the company, but if the concerned Director is in-charge of and is responsible to the company for its conduct of business, he can be held to be guilty of the offence under Section 138 of the Act.

8.He also relied upon the Judgment of the Honourable Supreme Court of India in ***S.M.S.Phamaceuticals Limited Vs. Netta Bhallen*** reported in ***(2005) 8 SCC 89,*** wherein the Honourable Supreme Court of India has held 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 Section141 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."*

9.Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent and perused the materials available on record.

10.The petitioners are arraigned as Accused Nos.5 and 6 in the complaint lodged by the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act. According to the respondent, the first accused partnership firm borrowed loan for a sum of Rs.10,00,000/- on 20.01.2015. In order to repay the same, they issued two cheques dated 15.07.2017 and 01.08.2017. Both the cheques were presented for collection and both were returned dishonoured for the reason that 'present in proper zone'.

11.The specific stand taken by the petitioners is that they were not the partners of the firm even at the time of borrowal of loan and at the time of issuance of cheques. Therefore, they are not liable to be punished for the offence under Section 138 of the Negotiable Instruments Act, since no evidence is made out against them.

12.On a perusal of the document produced by the petitioners namely Form A issued by the Register of Firms with regard to first accused partnership firm by name 'Sun Coir Mat' consisting of five partners, in which the petitioners were the fourth and fifth partners. While being so, they submitted Form No.V on 12.10.2015 after their resignation from the partnership firm as on 01.04.2014 and the same was recorded and their names were deleted on 12.10.2015 and it was duly in Register of Firm under Form A. In fact after receipt of statutory notice issued under Section 138 of the Negotiable Instruments Act, the first petitioner by reply dated 21.09.2017 issued reply notice and categorically stated that they were resigned from their partnership firm as early as on 01.04.2014 and as such they are not liable to pay any debts for the first accused firm. The reply was duly received by the respondent and the respondent also issued re-joinder, dated 09.10.2017. Though the respondent averred specific overt act as against the petitioners while borrowal of loan and also their day to day activities of the first accused firm, they were resigned from the first accused partnership firm as early as on 01.04.2014 itself. The Judgments cited by both the learned counsels are related to Section 141 of the Negotiable Instruments Act to make a Director of company or partners of the partnership firm is liable for offence under Section 138 of the Negotiable Instruments Act. Whereas in the case on hand admittedly the petitioners were resigned from the first accused partnership firm as early as on 01.04.2014 and as such they are not liable to be punished for the offence under Section 138 of the Negotiable Instruments Act. Therefore, the above Judgments cited by the learned counsels are not applicable to this case.

13.In view of the above, the proceedings in S.T.C.No.46 of 2018 on the file Judicial Magistrate No.VI (Fast Track Court-Magistrate Level), Madurai, is quashed insofar as the petitioners alone are concerned and this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ps

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 No.VI,
(Fast Track Court-Magistrate Level),
Madurai.

+1 CC to M/s.H. VELAVADHAS, Advocate (SR-16764[F] dated 06/04/2022)

Crl.O.P(MD)No.14732 of 2020
05.04.2022

RK(18.04.2022) 6P 3C