IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.11.2023

PRONOUNCED ON : 15.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.7262 & 7356 of 2021
and Crl.M.P.No.4843 & 4904 of 2021

Crl.O.P.No.7262 of 2021 :-

1. Amit Manipuria
   Director of M/s. Manpuria
   Agro Products Private Limited,
   28/4, Dobson Road, 2nd Floor,
   Ajmer Mansion,
   Howrah – 711 101.

2. Vasudha Manipuria
   Director of M/s. Manpuria
   Agro Products Private Limited,
   28/4, Dobson Road, 2nd Floor,
   Ajmer Mansion,
   Howrah – 711 101. ...Petitioners

-Vs-

1. M/s. Kotak Mahindra Bank Limited
   Having branch office at
   Samson Towers, 4th Floor,
   No.402 & 403, Pantheon Road,
   Egmore, Chennai – 600 008,
   Rep by its Chief Manager,
   A.Senthilkumar

2. M/s.Maupuria Agro Products Private Limited,
   Rep. by its authorized Signatory,
   Varun Manpuria,
   25, Maharishi Debendra Road,
   Kolkata – 700 007.

3. Varun Manpuria
   Director cum Authorized Signatore,
   M/s. Manpuria Agro Products Private Limited,
   202, Sarat Chatterjee Road,
   Barat Colony, Lake Town,
   North 24 parganas. ... Respondents

Crl.O.P.No.7356 of 2021 :-

1. Bishnu Kumar Manpuria
   Director, Manpuria Realtors (P) Ltd.,
   (Formerly known as M/s.Ma Tara Stores)
   202, Sarat Chatterjee Road,
   Barat Colony, Lake Town,
   North 24 Parganas.

2. Vasudha Manipuria
   Director, Manpuria Realtors (P) Ltd.,
   (Formerly known as M/s.Ma Tara Stores)
   28/4, Dobson Road, 2nd Floor,
   Ajmer Mansion,
   Howrah – 711 101. ...Petitioners

-Vs-

1. M/s. Kotak Mahindra Bank Limited
   Having branch office at
   Samson Towers, 4th Floor,
   No.402 & 403, Pantheon Road,
   Egmore, Chennai – 600 008,
   Rep by its Chief Manager,
   A.Senthilkumar

2. Manpuria Realtors (P) Ltd.,
(Formerly known as M/s.Ma Tara Stores)
Rep. by Director & Authorized Signatory,
Amit Manpuria,
25, Maharishi Debendra Road,
Kolkata – 700 007.

3. Amit Manpuria,
Director & Authorized Signatory,
Manpuria Realtors (P) Ltd.,
(Formerly known as M/s.Ma Tara Stores)
28/4, Dobson Road, 2nd Floor,
Ajmer Mansion,
Howrah – 711 101. ... Respondents

Common Prayer: Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure, to call for the records and quash the proceedings of C.C.Nos.1196 & 1195 of 2020, respectively, for alleged offences under Sections 138 to 142 of the Negotiable Instruments Act, 1881, now pending before the Fast Track IV Metropolitan Magistrate at George Town, Chennai.

In both Crl.O.Ps.

For Petitioners : Mr.M.Aravind Subramaniyam
Senior Counsel
For Mr.Jauanthi K. Shah

For Respondents
For R1 : Mr.E.K.Kumaresan
For R2 & R3 : No appearance

COMMON ORDER

These petitions have been filed to quash the proceedings in C.C.Nos.1196 & 1195 of 2020, on the file of the learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai, as against the petitioners, thereby taken cognizance for the offences under Sections 138 to 142 of the Negotiable Instruments Act (hereinafter referred to as "the NI Act), as against the petitioners.

2. In both petitions the complaints are one and the same. The petitioners in Crl.O.P.No.7262 of 2021 are the Directors of M/s. Manpuria Agro Products Private Limited and the petitioners in Crl.O.P.No.7356 of 2021 are the Directors of M/s. Manpuria Realtors Private Limited. Therefore, this Court is inclined to pass common order.

3. The crux of the complaint in both C.C.Nos.1195 & 1196 of 2020 is that the complainant/first respondent bank is engaged in the business of extending financial assistance to its prospective customers under various schemes. The accused approached the first respondent and availed various credit facilities on security documents including guarantee documents. Accordingly, both the first accused company

availed credit facilities to the tune of Rs.3 crores and Rs.4.5 crores respectively, and they are liable to repay the said loan as per the scheduled repayment date.

4. In pursuant to the terms of the said loan agreement, the accused 2 to 4 had offered personal guarantees, and they are obliged to repay the loan as per the demand raised by the first respondent bank. However, the accused failed to comply with the terms and conditions and neglected to honor their commitments thereby failed to make payment of the interest as well as the principal amounts. Insofar as the complaint in C.C.No.1195 of 2020, as on 18.01.2020, the accused are due to the tune of Rs.6,89,77,440/-. Towards part satisfaction and partial discharge of outstanding dues, the first accused issued two cheques signed by the second accused in favour of the first respondent bank for a sum of Rs.2,50,00,000/- each. Both the cheques were presented for collection and both were returned unpaid with remark “account blocked”. After causing statutory notice, the first respondent bank filed the complaints and the same have been taken cognizance by the trial Court in C.C.No.1195 of 2020.

5. Insofar as the other complaint is concerned, the first accused issued cheque which was signed by the second accused for a sum of Rs.1,72,85,072.33. The said cheque was presented for collection and the same was returned unpaid and dishonoured for the reason "account freeze". After causing statutory notice the first respondent lodged complaint and the same has been taken cognizance in C.C.No.1196 of 2020 on the file of the learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai.

6. In both cases, the learned Senior Counsel appearing for the petitioners submitted that the first accused company approached the first respondent bank for availing credit facilities in the month of March 2020, to the tune of Rs.7 crores and Rs.5 crores respectively. Subsequently, the first respondent bank unilaterally had frozen the first accused company's bank account on 04.06.2016. One of the frozen account of the first accused company is held in the first respondent bank and the first respondent bank presented the cheque before its own bank for collection and the same was returned for the reason that the account freeze. On the strength of the dishonoured cheque, the first respondent bank initiated proceedings under Section 138 of the NI Act.

6.1. He further submitted that there was no disbursement of funds consequent to the sanction letter dated 22.08.2016. Though the National Company Law Tribunal, Kolkata Bench by its order dated 11.11.2016, instructed the first respondent to de-freeze the account, it was not done. Though by an order dated 28.08.2019, the National Company Law Tribunal allowed the petition filed by the first respondent bank to recover the amount due in accordance with law, but restrained the first respondent bank from utilizing the proceeds of recovery. Thereafter, the first respondent bank misused the cheques which had been entrusted to them on 25.04.2014 and 15.10.2015. The first respondent bank had filled the cheques by themselves and presented the cheque for collection. In fact, the first respondent bank had unilaterally and without any authorization had frozen the account of the first accused. Therefore, the cheques were returned for the reason that the account blocked/account freeze. Hence, the offence under Section 138 of the NI Act is not at all attracted as against the petitioners.

6.2. He further contended that the cheques were not issued by the accused at any point of time. The cheques which were already handed over for the security purpose, were presented for collection. Therefore, the cheques were not issued for any legally enforceable debt by the petitioner. Insofar as the petitioners are concerned, they are Directors of the first accused company and they neither signed the cheque nor actively participated in the activities of the first accused company. In fact, the petitioners were inducted as Directors of the first accused company only after unilateral debit freeze of the first accused bank account. Therefore, the cheques were deliberately presented for collection for the reason that to get the cheques dishonoured so that they can maliciously prosecute the petitioners. In fact, the accounts of the first accused was frozen without any notice and also without any reason, since the account was maintained by the first respondent bank itself.

6.3. He further submitted that in fact, by the communication dated 18.06.2016, sent to the first respondent bank, the petitioners categorically stated that on 27.05.2016, a sum of Rs.5,30,00,000/- was transferred from M/s.Manpuria Agro Products Pvt. Ltd., to the account of M/s.Manpuria Consortium LLP. Similarly, a sum of Rs. 3,65,00,000/- from M/s.Rupnarayan Vanijya Pvt. Ltd., and Rs.5,24,00,000/- from M/s.Manupuria Realtors Pvt. Ltd., were transferred to M/s.Manupuria

Consortium LLP. Therefore, a sum of Rs.14,19,00,000/- was transferred to M/s.Manupuria Consortium LLP. Out of that, a sum of Rs.12,59,00,000/- was again transferred to the personal account of the first petitioner in Crl.O.P.No.7262 of 2021. Therefore, it is illegal and rotation of money on the same day from one account to another account is gross violation of the banking law and the breach of trust. Hence, he prayed to quash both the proceedings as against the petitioners.

7. The learned counsel appearing for the first respondent bank contended that when the cheques are returned for the reason that the account blocked/freeze, it is to be taken into consideration in detail trial before the trial Court by let in evidence. The parties will have to go through full fledged trial. Therefore, on the said ground, it cannot be quashed. The freezing of the account was not on account of the act of the first respondent bank. But it was on account of the act of the first accused company. Therefore, the accused cannot escape from the criminal liability for the reason that the cheques were returned dishonoured only on account of the frozen accounts of the first accused.

8. Heard the learned counsel appearing on either side and perused the material placed before this Court.

9. The Hon'ble Supreme Court of India in the judgement reported in ***AIR (2005) 3512*** in the case of ***S.M.S. Pharmaceuticles Ltd., Vs. Neeta Bhalla and anr.***, held that the director includes any person occupying the position of director, by whatever name called. There is nothing which suggests that simply by being a director in a company, one is supposed to discharge particular functions on behalf of a company. It happens that a person may be a director in a company but he may not know anything about day-to-day functioning of the company. As a director, he may be attending meetings of the Board of Directors of the company where usually they decide policy matters and guide the course of business of a company. Therefore, there is no universal rule that a director of a company is incharge of its everyday affairs. It all depends upon respective roles assigned to the officers in a company.

10. Therefore, mere use of a particular designation of an officer without more, may not be enough by way of an averment in a complaint to attract the offence under Section 138 of the NI Act. In order to bring

the case under Section 141 of the NI Act, the complaint must disclose the necessary facts which make a person liable. Therefore, every director of a company is not automatically vicariously liable for the offence committed by the company. Only such directors, who were incharge of or responsible to the company for the conduct of business of the company at the material time when the offence was committed alone, shall be deemed to be guilty of the offence. There must be clear unambiguous and specific allegations against the persons who are impleaded as accused that they were incharge of and responsible to the company in the conduct of its business when the offence was committed.

11. Therefore, the avernment in a complaint that an accused is a director and that he is in charge of and is responsible to the company for the conduct of the business of the company, duly affirmed in the sworn statement may be sufficient for the purpose of issuing summons to him. But if the accused is not one of the person, who is responsible to the company for the conduct of the business of the company. Merely by stating that he was in charge of the business of the company or by stating that he was incharge of the day-to-day management of the company or by stating that he was incharge of, and was responsible to the company for

the conduct of the business of the company, he cannot be made vicarious liable under Section 141 of the NI Act. As stated supra, the first respondent bank failed to make out a prima facie case to proceed as against the petitioners who are the directors of the first accused company for the offence under Section 138 r/w 141 of the NI Act.

12. It is also seen that pursuant to the sanction of cash credit facilities, there had been no disbursement of fund. On and from 04.06.2016, the account of the company was freezed by first respondent and it is still continuing, despite the standing order dated 11.11.2016 of the National Company Law Tribunal, to defreeze the frozen account of the company. Another point arised in this petition is that whether any cause of action arose to initiate the proceeding under Section 138 of the NI Act. It is relevant to extract the provisions under Section 138 of the NI Act.

> *"138 Dishonour of cheque for insufficiency, etc., of funds in the account. —*
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> *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any*

debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for 19 [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [20] [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said

notice.

Explanation.— For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.]"

13. It explains the meaning of the expression for discharge of any debt or other liability for the purpose of the provision under Section 138 of the NI Act. It means legally enforceable debt or other liability. It treats dishonoured cheque as an offence, if the cheque is issued in discharge of any debt or other liability. The explanation leaves no manner of doubt that to attract the offence under Section 138 of the NI Act, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheuqe. The cheques were issued for the purpose of security which was to be invoked in case of contingencies and there was no subsisting liability at the time of entrusting the cheques. The alleged cheques were obtained by the first respondent prior to the disbursement of the fund in the cash credit facilities. Therefore, the cheques were not issued for any leagally enforceable debt or other liability.

14. Admittedly, in both cases the cheques were returned for the reason that account blocked/account freezed. The accounts were not blocked or freezed on the instructions of the petitioners. The first accused company had approached the first respondent to avail certain credit facilities and they were disbursed a sum of Rs.7 crores and Rs.5 crores respectively in both complaints by the complainant. Thereafter, the first respondent bank had unilaterally frozen the accounts of the second respondent company on 04.06.2016. The second respondent also had sent E-mail to the first respondent alleging that it was unreasoned and unwarranted one.

15. Therefore, the first respondent bank had knowledge about the account blocked/freezed and presented the cheques for collection in their own bank itself that too in the blocked/frozen account. Therefore, the intention of the first respondent bank is very clear to maliciously prosecute the petitioners for the offence under Section 138 of the NI Act. They had presented the cheque and got dishonoured and initiated prosecution. By the letter dated 22.02.2020, the first respondent bank also admitted that the cheques were provided as security for the

repayment of the loan facilities availed by the second respondent company. Therefore, it would not attract the offence under Section 138 of the NI Act and both complaints are nothing but clear abuse of process of Court. The entire proceedings initiated under Section 138 of the NI Act is maliciously and are liable to be quashed.

16. In view of the above discussions, both the proceedings cannot be sustained as against the petitioners. Accordingly, the proceedings in C.C.Nos.1196 & 1195 of 2020, on the file of the learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai, are hereby quashed as against the petitioners and both the Criminal Original Petitions stand allowed. Consequently, connected miscellaneous petition are closed.

15.12.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order

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To

1. The Metropolitan Magistrate,
   Fast Track Court-IV,
   George Town, Chennai.

G.K.ILANTHIRAIYAN. J,

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ORDER IN
Crl.O.P.Nos.7262 & 7356 of 2021
and Crl.M.P.No.4843 & 4904 of 2021

15.12.2023