



Crl.O.P.No.7559 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.03.2023

PRONOUNCED ON : 29.03.2023

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.7559 of 2022

and

Crl.M.P.Nos.4341 & 4343 of 2022

S.Nagarajan,
Managing Director,
Adgear Media Private Limited,
6E, Gee Gee Emerald,
No.151, Village Road, Seetha Nagar,
Nungambakkam,
Chennai – 600 034

...

Petitioner

Vs.

Mathrubhumi Printing and Publishing Company Limited,
represented by its Authorized representative/signatory,
Mr.Sunil Ramachandran AGM – Media Solutions,
3rd Floor, Dr.Radhakrishnan Salai,
Mylapore,
Chennai – 600 004.

...

Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying
to quash the criminal proceedings against the petitioner/3rd accused in



Crl.O.P.No.7559 of 2022

C.C.No.787/2019, pending on the file of Fast Track III, Metropolitan Magistrate, Saidapet, Chennai - 600015.

For Petitioner : Mr.R.Rajesh

For Respondent : Mr.S.Anil Sandeep for
Ms.Deepa HariGovind

ORDER

This Criminal Original Petition has been filed to quash the criminal proceedings against the petitioner/3rd accused in C.C.No.787 of 2019, pending on the file of the Fast Track III, Metropolitan Magistrate, Saidapet, Chennai - 600015.

2.Respondent filed a case under section 138 of Negotiable Instruments Act against the petitioner and two others for dishonour of cheques. The case of the respondent is that respondent is doing the business of printing and publishing newspapers, periodicals, FM radio stations, Mathrubhumi News Channel, Kappa TV, digital business etc. Claiming that the petitioner as the Managing Director of the first accused Adgear Media Private Limited and one S.Krishnan as Chairman, respondent stated that the accused approached the respondent/complainant and placed order for the publication of advertisements in their newspapers. For the said transaction, they are liable to



Crl.O.P.No.7559 of 2022

pay a sum of Rs.93,98,838.95. The accused issued a cheque bearing No.004845 dated 15.12.2017 for Rs.35,70,308/- and another cheque bearing No.004846 dated 04.12.2017 for Rs.35,70,308/-, both drawn on M/s.Karur Vysya Bank, Teynampet branch, Chennai. These cheques were presented on 06.12.2017 and 15.12.2017 respectively, through M/s. Canara Bank, Royapettah branch, Chennai. The said cheques were returned as "funds insufficient" vide return memos, dated 08.12.2017 and 19.12.2017. When it was informed to the accused, they requested respondents to present the cheques again on 29.01.2018. Accordingly, cheques were presented again on 29.01.2018 and they were again returned on 30.01.2018 stating that "funds insufficient". The accused issued a cheque knowing fully well that they have no funds in the account. Therefore, statutory notice was given on 27.02.2018. The accused received the notice and paid a sum of Rs.8,86,129/- towards part transaction, but did not pay the balance amount. Therefore the case was filed.

3.Petitioner is the third accused in this case. After entering appearance, he filed this quash petition challenging the proceedings against him on the following grounds.

(i) Petitioner was not the Managing Director of the first accused



Crl.O.P.No.7559 of 2022

company, but he was only a Non Executive Director with effect from 21.03.2016. In support of his submission that he is not a Managing Director, but only a Non Executive Director, copy of form DIR - 12 submitted by the first accused company to the Registrar of Companies is produced. Therefore, as on 23.01.2016 petitioner was only a Non Executive Director and not the Managing Director of the first accused company.

(ii) When a complaint is filed against the company under the Negotiable Instrument Act, complaint should have been filed under section 138 r/w 141 of Negotiable Instruments Act, however, this complaint was not filed under section 141 of Negotiable Instruments Act. There is no specific allegations/averments made in the complaint as to the role of petitioner in the day to day administration of the first accused company and as to whether the petitioner was the person in charge of the business operations and issuance of cheque. In the absence of specific pleadings in this regard, petitioner cannot be prosecuted merely for the reason that he is a Director.

(iii) The impugned cheque was not signed by the petitioner. Thus, it is



Crl.O.P.No.7559 of 2022

the submission of the learned counsel for the petitioner that petitioner cannot be prosecuted and prayed for quashing the proceedings.

4.In support of his submissions, the learned counsel for the petitioner relied on the judgment reported in **(2005) 8 SCC 89 in *S.M.S.Pharmaceuticals Ltd., Vs. Neeta Bhalla and another.***

5.In response, the learned counsel for the respondents submitted that though the statutory notice was served on petitioner and other accused, none chose to give reply to the statutory notice. For the first time, it is submitted that petitioner is not a Managing Director, but only a Non Executive Director in the first accused company. There are only two persons responsible for the conduct of the business of the first accused company and they are A2 S.Krishnan, Chairman and petitioner S.Nagarajan, Managing Director. If they are not Chairman and Managing Director, they must have sent a reply. Having failed to send a reply, it is not open for the petitioner to state that he is not the Managing Director, but only Non Executive Director and he has no role in the conduct of the business of the first accused company. In the Memorandum of Understanding filed in the typed set of papers, the following



Crl.O.P.No.7559 of 2022

terms are included.

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8.The Party of the SECOND PART will assist Adgear Media Pvt Ltd. in securing business, opening of branches, mergers & acquisitions, for a minimum period of ONE YEAR from the date of signing this agreement.

9. The Party of the SECOND PART will assist Adgear Media Pvt Ltd. in execution of the business secure for a minimum period of FOUR MONTHS from the date of signing this agreement.

These terms show that petitioner was actively involved in the business of the first accused company. Therefore, it is not open to petitioner to contend that he has no connection with the day to day administration of the first accused company and therefore, not liable for prosecution.

6.With regard to form DIR – 12, the possibility of forgery committed



Crl.O.P.No.7559 of 2022

cannot be ruled out. Therefore, it is the subject matter for evidence. These disputed facts are required to be proved in trial. The case is pending for questioning the accused under section 313 Cr.P.C. Filing of the quash petition, at this stage, cannot be entertained and thus, he prayed for dismissal of the petition.

7.In reply, the learned counsel for the petitioner submitted that notice was sent to the company address, petitioner was not actively participating in the affairs of the company for the reason that he is only a Non Executive Director and therefore, he was not aware of the statutory notice. He came to know about the case only after the Non Bailable Warrant issued against him. This submission was countered by the learned counsel for the respondents by stating that case summon was sent to the same address and it was received by the petitioner.

8.Considered the rival submissions and perused the records.

9.As stated earlier, the case is filed under Section 138 NI Act. As



rightly pointed out by the learned counsel for the petitioner, Section 141 is not

included in the complaint. Section 141 NI Act deals with offences under

Section 138 committed by Company. Section 141 NI Act reads as follows:

141.Offences by companies.- *If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this subsection shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial



Crl.O.P.No.7559 of 2022

corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

As per this section, if an offence under Section 138 is committed by a



Crl.O.P.No.7559 of 2022

company every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished.

10. When a question arose as to;

(a) whether it is necessary to specifically state in the complaint that a person accused was in charge of, and responsible for the conduct of business of the company?

(b) whether a Director of a company would be deemed to be in charge of, or responsible for the conduct of the business of the company and therefore, deemed to be guilty of the offences unless he produce evidence to the contrary?

(c) Even if it is held that specific averments are necessary, whether in the absence of such averments, signatory of the cheque or the Managing Director or Joint Managing Director can be proceeded against?

The Hon'ble Supreme Court in ***S.M.S. Pharmaceuticals Ltd., Vs. Neeta***



Bhalla and another reported in **(2005) 8 SCC 89** answered these questions as

follows:

"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."

11.To arrive at this conclusion, the Hon'ble Supreme Court referred to various judgments delivered on these issues. During the course of discussions, the following observations are made.



Crl.O.P.No.7559 of 2022

(a) The normal rule in the cases involving criminal liability is against vicarious liability, that is, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in statutes extending liability to others. Section 141 of NI Act is an instance of specific provision which in case an offence under Section 138 is committed by a Company, extends criminal liability for dishonour of cheque to officers of the Company. Section 141 contains conditions which have to be satisfied before the liability can be extended to officers of a company. Since the provision creates criminal liability, the conditions have to be strictly complied with. The conditions are intended to ensure that a person who is sought to be made vicariously liable for an offence of which the principal accused is the Company, had a role to play in relation to the incriminating act and further that such a person should know what is attributed to him to make him liable. In other words, persons who had nothing to do with the matter need not be roped in. A company being a juristic person, all its deeds and functions are result of acts of others. Therefore, officers of a Company who are responsible for the acts done in the name of the Company are sought to be made personally liable for acts which result in criminal action being taken against the Company. It makes every



Crl.O.P.No.7559 of 2022

person who, at the time, the offence was committed, was in charge of and was responsible to the Company for the conduct of business of the Company, as well as the Company, liable for the offence. The proviso to the subsection contains an escape route for persons, who are able to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence.

(b) The officers responsible for conducting the affairs of companies are generally referred to as Directors, Managers, Secretaries, Managing Directors etc. Is it sufficient to simply state in a complaint that a particular person was a Director of the Company, at the time the offence was committed and nothing more is required to be said.

12. Discussing further, with regard to the role of a Director of Company, in Section 2 of the Companies Act, 1956 "Director" includes any person occupying the position of a Director, by whatever name called. Functions of Director are assigned as per the Memorandum and Articles of Association of the company. 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



Crl.O.P.No.7559 of 2022

company. A person may be a Director in a company, but he may not know anything about day- to-day functioning of the company. There is no universal rule that a Director of a company is in charge of its everyday affairs. A company may have Managers or Secretaries for different departments. These officers may also be authorised to issue cheques under their signatures with respect to affairs of their respective departments. Will it be possible to prosecute a Secretary of Department-B regarding a cheque issued by the Secretary of Department-A which is dishonoured? The Secretary of Department-B may not be knowing anything about issuance of the cheque in question. When the requirements in Section 141, which extends the liability to officers of a company, is that such a person should be in charge of and responsible to the company for conduct of business of the company, how can a person be subjected to liability of criminal prosecution without it being averred in the complaint that he satisfies those requirements.

13.The abovesaid observations plainly and clearly make it clear that it is absolutely necessary to aver in the complaint as to whether the accused are in charge of and responsible to the company for the conduct of the business of the company. However, in paragraph 9 of the judgment cited supra, it is



observed as follows:

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The position of a Managing Director or a Joint Managing Director in a company may be different. These persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. In order to escape liability such persons may have to bring their case within the proviso to Section 141 that is, they will have to prove that when the offence was committed they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.

The position of a Managing Director or Joint Managing Director is different in the sense that they are in charge of a company and are responsible for the conduct of the business of the company. They have to bring their case within the proviso to Section 141 (1) to escape their liability.

14. Admittedly, in this case, there is no specific averment in the complaint that petitioner was in charge of and responsible to the company for the conduct of the business of the company. Though, it is claimed that petitioner is a Managing Director of the first accused company, petitioner has produced document in the form of DIR-12 to show that he is not the



Crl.O.P.No.7559 of 2022

Managing Director and he was only a Non Executive Director from 21.03.2016. The impugned cheques were given on 04.12.2017 and 15.12.2017, after petitioner ceased to be a Director or Managing Director, but only continues as a Non Executive Director. It is also pertinent to note here that petitioner is not a signatory to the cheques. The cheques were signed and issued by the second accused S.Krishnan. The fact that petitioner was a Non Executive Director is available in the public domain after it was filed and accepted by the Registrar of Companies. Therefore, respondent cannot take advantage of the fact that the statutory notice was not replied by petitioner explaining his position in the company.

15. Even in the Memorandum of Understanding, dated 04.06.2015, relied by the respondents, we can gather that petitioner's role is very limited. This Memorandum of Understanding was entered into between S.Krishnan, S.Nagarajan and Preethika Nagarajan. In terms of the share purchase agreement, dated 04.06.2015, S.Krishnan purchased 60% of the shares held by S.Nagarajan and Preethika Nagarajan. It is specifically stated that because of this acquisition, S.Krishnan acquired controlling stake in M/s.Adgear Media Private Limited, namely, the first accused. Clause 10 of the agreement



Crl.O.P.No.7559 of 2022

reads that S.Nagarajan will hand over operation of Bank Accounts of M/s.Adgear Media Private Limited immediately on signing this agreement to S.Krishnan. Clause 11 reads that S.Krishnan will be the sole signatory of M/s.Adgear Media Private Limited for all banking and statutory transactions.

16.Clauses 10 and 11 of the Memorandum of Understanding, dated 04.06.2015, abundantly make it clear that petitioner is no way responsible for the banking and statutory transactions of the first accused company, but it was the second accused S.Krishnan, who was responsible for the banking and statutory transactions.

17.When it is clearly established that petitioner had no role in the bank operations and statutory transaction of the first accused company and when there is no specific averment in the complaint that petitioner was in charge of and responsible to the company for the conduct of the business of the company and when that the impugned cheques were not signed by him and he is neither the Managing Director nor the Joint Director, this Court is of the considered view that there is absolutely no ground to prosecute petitioner for the offence under Section 138 NI Act.



Crl.O.P.No.7559 of 2022

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18. In this view of the matter, this Criminal Original Petition is allowed and the proceedings against the petitioner in C.C.No.787/2019, pending on the file of Fast Track III, Metropolitan Magistrate, Saidapet, Chennai-600015 is quashed. Consequently, connected miscellaneous petitions are closed.

29.03.2023

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Internet: Yes

Index: Yes/No

Speaking/Non speaking order

To:

1. The Metropolitan Magistrate Court,
Fast Track III,
Saidapet, Chennai – 600015.

2. The Public Prosecutor,
High Court of Madras.



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Crl.O.P.No.7559 of 2022

G.CHANDRASEKHARAN, J.
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Pre-delivery Order in
Crl.O.P.No.7559 of 2022

29.03.2023