IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2023

CORAM

THE HONOURABLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No. 8527 of 2014
and
M.P.Nos.1 & 2 of 2014 and 1 of 2015

R.Subramanian
Managing Director,
M/s.Viswapriya (India) Ltd.,
No.75-C, II Main Road,
Gandhi Nagar,
Adyar, Chennai – 600 020. ... Petitioner

Vs

Dhuruvan,
Rep. by POA, Ramkumar,
No.150, Lattice Bridge Road,
Thiruvanmiyur,
Chennai – 600 041. ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records and quash the complaint in C.C.No. 872 of 2014 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr.R.Subramanian
(Party in person)

For Respondent : No appearance

ORDER

This Criminal Original petition has been filed to quash the complaint in C.C.No. 872 of 2014 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai.

2. The learned counsel appearing for the respondent submitted that already the entire bundle was handed over to the party and he had no instruction. Though, the respondent received the entire bundle long back, he failed to engage any counsel on his behalf. Though notice has been served on the respondent, none appeared on behalf of the respondent either in person or through pleader.

3. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. The crux of the complaint is that the respondent purchased 375 bonds of Secured Non-Convertible Debentures of Rs.1,000/- each on 13.05.2012 under Bond Folio No.ABS 13052012/12180, Bond Certificate No.ABS 051203 and the distinct number of bonds being 141774 to 141921 for a total sum of Rs.1,50,000/- redeemable at par. The rate of interest

committed by the accused was 11.75% per annum payable on a monthly basis. The petitioner further averred that on redemption of the bonds a cheque was issued in favour of the respondent towards the maturity of the said bonds. When it was presented for collection, the same was dishonorued for the reason that "Payment Stopped by the Drawer". After causing statutory notice, the respondent lodged a compliant for the offence under Section 138 to 142 of Negotiable Instruments Act.

4. The only ground raised by the petitioner is that the cheque itself was not issued by the Company of which the petitioner has been described as the Managing Director. There was no averment that the cheque was issued by or on behalf of the Company. However, statutory notice was issued only to the Managing Director mentioning the name of the petitioner of one "Viswapriya Financial Services and Securities Ltd". Whereas the cheque was issued for the services of one maintained account. Admittedly, there was no notice issued to the said Company by the respondent herein. Further, there was no specific averment as against the Managing Director or any of the Director of the said Company. That apart, the petitioner is not the

Managing Director of the Company called "M/s.Viswapriya Financial Services and Securities Ltd., and he is only a non-executive director and he is neither the Managing Director nor the Signatory to the cheque. Therefore, no cause of action arose to implead the petitioner as an accused. If a person is neither the Managing Director nor the signatory to the cheque, the complaint would not be maintainable without the role of the accused being spelt out in detail. Further the complaint could not be maintained against a director alone without impleading the Company which has issued the cheque.

5. On perusal of the complaint, it reveals that neither the directors nor the Company were impleaded as an accused. That apart, no statutory notice was issued to any of the Director or Company. In this regard, it is relevant to rely upon the Judgment reported in ***(2012) 5 SCC 661*** in the case of ***Aneeta Hada Vs. Godfather Travels and Tours Private Limited,*** in which the Hon'ble Supreme Court of India held as follows :

> "50. However, it is noticeable that the Bench thereafter referred to the dictum in Sheoratan Agarwal (supra) and eventually held as follows: -
>
> > "*21*. We, therefore, hold that even if the prosecution proceedings against the Company

> were not taken or could not be continued, it is no bar for proceeding against the other persons falling within the purview of sub-sections (1) and (2) of Section 141 of the Act."

51. We have already opined that the decision in Sheoratan Agarwal (supra) runs counter to the ratio laid down in the case of C.V. Parekh (supra) which is by a larger Bench and hence, is a binding precedent. On the aforesaid ratiocination, the decision in Anil Hada (supra) has to be treated as not laying down the correct law as far as it states that the director or any other officer can be prosecuted without impleadment of the company. Needless to emphasize, the matter would stand on a different footing where there is some legal impediment and the doctrine of lex non cogit ad impossibilia gets attracted.

52. At this juncture, we may usefully refer to the decision in U.P. Pollution Control Board v. M/s. Modi Distillery and others. In the said case, the company was not arraigned as an accused and, on that score, the High Court quashed the proceeding against the others. A two-Judge Bench of this Court observed as follows: -

> "6...Although as a pure proposition of law in the abstract the learned single Judge's view that there can be no vicarious liability of the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors under sub-s.(1) or (2) of S.47 of the Act unless there was a prosecution against Messers Modi Industries Limited, the Company owning the industrial unit, can be termed as correct, the objection raised by the petitioners before the High Court ought to have been viewed not in isolation but in the conspectus of facts and events and not in vacuum. We have already pointed out that the technical flaw in the

> complaint is attributable to the failure of the industrial unit to furnish the requisite information called for by the Board. Furthermore, the legal infirmity is of such a nature which could be easily cured. Another circumstance which brings out the narrow perspective of the learned single Judge is his failure to appreciate the fact that the averment in paragraph 2 has to be construed in the light of the averments contained in paragraphs 17, 18 and 19 which are to the effect that the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors were also liable for the alleged offence committed by the Company."

Be it noted, the two-Judge Bench has correctly stated that there can be no vicarious liability unless there is a prosecution against the company owning the industrial unit but, regard being had to the factual matrix, namely, the technical fault on the part of the company to furnish the requisite information called for by the Board, directed for making a formal amendment by the applicant and substitute the name of the owning industrial unit. It is worth noting that in the said case, M/s. Modi distilleries was arrayed as a party instead of M/s Modi Industries Limited. Thus, it was a defective complaint which was curable but, a pregnant one, the law laid down as regards the primary liability of the company without which no vicarious liability can be imposed has been appositely stated.

53 . It is to be borne in mind that Section 141 of the Act is concerned with the offences by the company. It makes the other persons vicariously liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied. There can be no dispute that as the liability is penal in nature, a strict construction of the provision would be necessitous and, in a

way, the warrant.

54. In this context, we may usefully refer to Section 263 of Francis Bennion's Statutory Interpretation where it is stated as follows: -

> "A principle of statutory interpretation embodies the policy of the law, which is in turn based on public policy. The court presumes, unless the contrary intention appears, that the legislator intended to conform to this legal policy. A principle of statutory interpretation can therefore be described as a principle of legal policy formulated as a guide to legislative intention.

55. It will be seemly to quote a passage from Maxwell's The Interpretation of Statutes (12th Edition) : -

> "The strict construction of penal statutes seems to manifest itself in four ways: in the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfilment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction."

6. Thus, it is settled law that for maintaining the prosecution under Section 141 of the Negotiable Instruments Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. Therefore, the very complaint

itself is not maintainable and it is liable to be quashed.

7. In view of the above discussion, the complaint in C.C.No. 872 of 2014 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai is hereby quashed and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are also closed.

13.04.2023

Internet:Yes
Neutral Citation : Yes/No
Speaking/non speaking order

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