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Crl OP Nos. 14875, 14879 & 14882 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition Nos. 14875, 14879 & 14882 of 2021
and
Crl.M.P. Nos. 8101, 8102, 8104, 8106, 8109 & 8110 of 2021

S. Mohan Chary ... Petitioner in all the petitions

Versus

N. Subramanian ... Respondent in all the petitions

COMMON PRAYER : Criminal Original Petitions filed under Section 482 of the Criminal Procedure Code seeking to call for the records of the proceedings in S.T.C. Nos. 465, 844 & 845 of 2020 on the file of the Fast Track Court at Magisterial Level II at Poonamallee and quash the same as illegal.

For Petitioner : Mr. T. Ayyasamy.

For Respondent : Mr. C. Prabakaran.

COMMON ORDER

These petitions are to quash the complaints filed by the respondent for the alleged offence under Section 138 of the Negotiable Instruments



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(Amendment) Act-2015.

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2.It is alleged in all the complaints that towards discharge of the liability, the petitioner issued cheques; that when the said cheques are presented for collection, the same were dishonoured.

3.The learned counsel for the petitioner in all the cases submitted that the cheque was issued from the account of the company which was signed by the petitioner herein. However, the complainant / respondent had not prosecuted the company in the impugned complaints and hence, they are liable to be quashed on the sole ground. The learned counsel relied upon the Judgment of the Honourable Supreme Court in ***Pawan Kumar Goel Vs. State of U.P. & Another*** reported in ***2022 SCC Online SC 1598***.

4.The learned counsel for the respondent in all the cases fairly submitted that cheques were issued from the account of the company. However, the learned counsel would submit that since the accused had not denied the liability, if the complaints are quashed, the respondent would be without any remedy. The learned counsel for the respondent relied upon the Judgment of the Honourable Supreme Court in ***Anil***



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Hada Vs. Indian Acrylic Ltd., reported in ***(2000) 1 Supreme Court***

Cases 1 and submitted that even if company is not arrayed as an accused, the complaint is maintainable and hence, he prayed for dismissal of these petitions.

5.This Court finds that since admittedly, the cheques were issued from the account of the company, the impugned complaints are liable to be quashed on the settled position of law that if the company is not arrayed as an accused, the persons mentioned in sub-sections (1) and (2) of Section 141 of the Negotiable Instruments Act cannot be prosecuted. The Honourable Supreme Court in ***Pawan Kumar Goel's case (cited supra)*** had reiterated the said position of law. The relevant observations are extracted hereunder;

“19. This Court has been firm with the stand that if the complainant fails to make specific averments against the company in the complaint for the commission of an offence under Section 138 of NI Act, the same cannot be rectified by taking recourse to general principles of criminal jurisprudence. Needless to say, the provisions of Section 141 impose vicarious liability by deeming fiction which pre-supposes and requires the commission of the offence by the company



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or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-section (1) and (2) would not be liable to be convicted on the basis of the principles of vicarious liability.”

Further, it is seen that the Judgment relied upon by the learned counsel for the respondent against the persons mentioned in Section 141 of the Negotiable Instruments Act, has been overruled by the Judgment of the Honourable Supreme Court in ***Aneeta Hada Vs. M/s. Godfather Travels & Tours Pvt. Ltd.***, reported in ***(2012) 5 Supreme Court Cases 661***. Therefore, for the above reasons, all the impugned complaints are liable to be quashed.

6. Accordingly, these Criminal Original Petitions are allowed and the proceedings in S.T.C. Nos. 465, 844 & 845 of 2020 on the file of the Fast Track Court at Magisterial Level II at Poonamallee is quashed as against the petitioner. Consequently, all the connected miscellaneous petitions are closed.

12.06.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Fast Track Court at Magisterial Level II,
Poonamallee.
2. The Additional Public Prosecutor,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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