



Crl.R.C. Nos.1405, 1406, 1407 & 1463 to 1465 of 2023 & Crl. M.P. Nos. 12010, 12016, 12017, 12901, 12902 & 12903 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

Crl.R.C. Nos.1405, 1406, 1407 & 1463 to 1465 of 2023 &
Crl. M.P. Nos. 12010, 12016, 12017, 12901, 12902 & 12903 of 2023

Ram Thiagarajan

...Petitioner in Crl. R.Cs

Vs.

1.N. Sambasivam

S/o. Natarajan

Proprietor S.G.M. Lorry Service

11 Parasanthi Nagar, Thirupapuliyur

Cuddalore 607 002.

2. M/s. Thiru Arroran Sugar Limited

No.112, Uthamar Gandhi Street

Nungambakkam,

Eldorado, Chennai 600 034.

...Respondents in

Crl.R.C.Nos.1405,1463 & 1465/2023

1.N. Sambasivam

S/o. Natarajan

Proprietor S.G.M. Lorry Service

11 Parasanthi Nagar, Thirupapuliyur

Cuddalore 607 002.

2. M/s. Shree Ambika Sugars Ltd.

No.112, Uthamar Gandhi Street

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Nungambakkam,

Eldorado, Chennai 600 034.

...Respondents in
Crl.R.C.Nos.1406,1407 &1464/2023

Common Prayer : Criminal Revision Case filed under Section 397(1) r/w 401 Cr.P.C. against the order dated 16.05.2023 in C.M.P. Nos.15483, 15482, 15484, 15485, 15486 and 15487 of 2022 in STC Nos.1095, 1096, 1098, 824, 823, and 1097 of 2019 , on the file of the Judicial Magistrate III, Cuddalore.

In all Crl.Rcs

For Petitioner : Mr. Ramaswamy Meyyappan
For Respondents : Mr. R.Swarnavel

COMMON ORDER

Challenge in these Criminal Revisions are made to the orders dated 16.05.2023 in C.M.P. Nos.15483, 15482, 15484, 15485, 15486 and 15487 of 2022 in STC Nos.1095, 1096, 1098, 824, 823, and 1097 2019 , on the file of the Judicial Magistrate III, Cuddalore.

2. The revision petitioner is the accused in STC Nos. 1095, 1096, 1098, 824, 823, and 1097 2019, on the file of the Judicial Magistrate III, Cuddalore.



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3. The 1st respondent/complainant filed 6 private complaints under Section 200 Cr.P.C. against the revision petitioner/accused for an offence punishable under Section 138 r/w 141 of the Negotiable Instruments Act.

4. The case of the complainant in a nutshell is as follows:

4.1. The complainant is a proprietor of S.G.M. Lorry Service. He filed an application in IBA/144/2019 before the National Company Law Tribunal (NCLT), Chennai, for initiation of Corporate Insolvency Resolution Process under Section 9 of Insolvency and Bankruptcy Code, 2016, for recovery of Rs.1,40,02,583/- from M/s.Thiru Arooran Sugars Private Limited and Rs.67,87,962/- from M/s.Shree Ambika Sugars Limited. The said Application was withdrawn by the complainant pursuant to the Memorandum of Compromise arrived at between the complainant and M/s.Thiru Arooran Sugars Private Limited and M/s.Shree Ambika Sugars Limited, and the accused issued the following cheques.



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Date	Amount (Rs.)	In favour of
30.04.2019	46,67,000-00	Thiru Arooran Sugars Private Limited
31.05.2019	46,67,000-00	-do-
30.06.2019	46,68,583-00	-do-
30.04.2019	22,62,600-00	Shree Ambika Sugars Limited.
31.05.2023	22,62,600-00	-do-
30.06.2019	22,62,762-00	-do-

When the cheques were presented by the complainant through his banker, viz., Lakshmi Vilas Bank, Cuddalore, the same were returned unpaid for the reason 'Insufficient Funds'. Therefore, the complainant issued statutory notices dated 09.05.2019, 18.06.2019 and 16.07.2019 to the Chairman and Managing Director of M/s.Thiru Arooran Sugars Private Limited, and M/s.Shree Ambika Sugars Limited demanding them to make good the payment. Since no reply was received from any of them, he filed the following cases under Section 200 Cr.P.C. against the accused before the Judicial Magistrate III, Cuddalore.



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Case No.	Cheque No.	Cheque Date	Amount claimed to be in default (Rs.)
STC/823/2019	520719	30.04.2019	22,62,600-00
STC/824/2019	520606	30.04.2019	46,67,000-00
STC/1095/2019	520607	31.05.2019	46,67,000-00
STC/1096/2019	520720	31.05.2019	22,62,600-00
STC/1097/2019	520610	30.06.2019	46,68,583-00
STC/1098/2019	520721	30.06.2019	22,62,762-00

4.2. On receipt of the complaints, the learned Judicial Magistrate, Cuddalore, took cognizance of the offence after recording the sworn statement of the complainant and issued summons to the accused under Section 204 Cr.P.C. On appearance of the accused, copies of records were furnished to him under Section 207 Cr.P.C and the accused was also questioned with regard to the substance of accusation made against him. Since the accused pleaded not guilty, the case was posted for trial. The complainant examined himself and marked various documents. The accused thereafter was questioned under Section 313 Cr.P.C., with regard to the circumstances appearing in evidence against him. His answers were of simple denial. At this stage, the complainant filed petitions to implead the principal offender, namely, M/s.Thiru



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Arooran Sugars Private Limited and M/s.Shree Ambika Sugars Limited

as accused in the respective private complaints. The said petitions were allowed by the learned Judicial Magistrate III, Cuddalore vide orders dated 16.05.2023 on the following grounds:

- 1) The complainant was rendering transport service to the accused Company and thereby the Company owes money to the complainant.
- 2) The complainant had also filed an application before the National Company Law Tribunal, Chennai, under Insolvency and Bankruptcy Code, 2016, and in order to avoid the rigor of CIRP, the Company accepted its liability and issued cheques.
- 3) The revision petitioner/accused, Ram Thiyagarajan, had issued cheques on behalf of the company and therefore, the complaints before NCLT were dismissed as withdrawn.
- 4) The accused had participated in the trial and cross examined the complainant also. The complainant had infact issued notices to M/s.Thiru Arooran Sugars Private Limited and M/s.Shree Ambika



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Sugars Limited, at the registered office at No.112, Uthamar Gandhi Street, Nungambakkam, Eldorado, Chennai 600 034, which were received by the accused and therefore, now the accused cannot contend that no notice was issued to the Company.

- 5) Ram Thiagarajan, the revision petitioner/accused, is vicariously liable for the offence committed by the Company and if the principal offender is not tried in the above complaints, fixing vicarious liability on the accused would be impossible. The mistake committed by the complainant is purely technical and the same can be cured with the leave of the Court as per the decision of the Hon'ble Supreme Court in ***U.P.Pollution Control Board vs. Messrs Modi Distillery and others*** reported in ***(1987) 3 Supreme Court Cases 684.***

5. Aggrieved over the same, the present Criminal Revision Cases are filed.



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6. Mr. Ramaswamy Meyyappan, learned counsel for the revision petitioner contended that since the Company was not issued with any notice as provided under Section 141 of the NI Act, he cannot be impleaded as a party/accused after questioning the Director of the Company under Section 313 Cr.P.C.. His further contention is that the petition cannot be entertained since no provision of law has been quoted by the complainant for impleading the Company, namely, M/s.Thiru Arooran Sugars Private Limited and M/s.Shree Ambika Sugars Limited, as accused and this exercise cannot also be done under Section 319 Cr.P.C. Ram Thiyagarajan, the revision petitioner, is not an appropriate representative of the Company at the time of issuance of statutory notice and he is not also the authorised signatory of the Company. It is also his contention that the Company cannot be impleaded as an accused after commencement of CIRP under Insolvency and Bankruptcy Code, 2016. He relied on the following decisions in

1. *Himanshu vs. B. Shivamurthy reported in (2019) 3 SCC 797*
2. *Suryanarayanan vs. Anchor Marine Services reported in 1994 SCC Online Mad 455.*



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3. *Aneeta Hada vs. Godfather Travels and Tours reported in (2012) 5 SCC 661.*
4. *Dayle De' Souza vs. Government of India reported in 2021 SCC Online SC 1012.*
5. *S.M.S. Pharmaceuticals Ltd., Vs. Neeta Bhalla reported in (2005) 8 SCC 89.*
6. *Girdhari Lal Gupta vs. D.H. Mehta reported in 1971 (3) SCC 189.*
7. *Pawan Kumar Goel Vs. State of U.P. reported in 2022 SCC Online SC 1598.*
8. *Ramesh Nagarkoti Vs. Kedar Datt reported in 2021 SCC Online Utt 745.*
9. *B.Raman and others Vs. Shasun Chemicals and Drugs Ltd. reported in 2006 (4) CTC 529.*
10. *Ranjith Singh Vs. State of Punjab reported in (1998) 7 SCC 149.*
11. *N. Harihara Krishnann vs. J. Thomas reported in (2018) 13 SCC 663.*
12. *Ferani Hotels Pvt. Ltd., vs. Nulsi Neville Wadia reported in 2010 SCC Online Bom 1898.*



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Anr. reported in (2011) 13 SCC 316

and contended that in order to make out an offence under Section 138 of Negotiable Instruments Act, the necessary conditions to be fulfilled are (1) presentation of cheque to the bank within a period of 3 months from the date on which it is drawn or within the period of its validity, whichever is earlier; (2) demand being made in writing by payee or holder of cheque in due course by issuance of notice in writing to drawer of cheque within 30 days of receipt of information from bank of return of cheques and (3) failure of drawer to make payment of amount to the payee or holder in due course within 15 days on receipt of notice. His specific contention is that only upon compliance of these conditions, offence under Section 138 of the Negotiable Instruments Act is said to have been committed by a person issuing the cheque and since in the instant case no notice was issued demanding the company to make good the amount, the company cannot be prosecuted. It is also his contention that if the Company has not been impleaded as an accused in the proceedings, it will not be in compliance with Section 141 of the



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Negotiable Instruments Act and therefore the prosecution is not sustainable against the Directors or persons in the administration of the Company.

7. Per contra, Mr. R.Swarnavel, learned counsel for the respondent would contend that the complainant, only at the time of questioning the accused under Section 313 Cr.P.C, realised the mistake committed by him and filed applications to implead the principal offender/Company and the trial court judge had rightly allowed the said applications. It is also his contention that statutory notices were indeed issued to the Chairman and Managing Director of M/s.Thiru Arooran Sugars Private Limited and M/s.Shree Ambika Sugars Limited, at the registered office at No.112, Uthamar Gandhi Street, Nungambakkam, Eldorado, Chennai 600 034, and the same were received by Ram Thiagarajan, Chairman and Managing Director of the Company. Thus it can be seen that both the company and the Chairman and Managing Director were issued with the statutory notice and therefore it cannot be contended that the company was not issued with statutory notice. He



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therefore, prayed for dismissal of the present revision.

8. A perusal of the statutory notice issued by the complainant shows that it was addressed to the Chairman, M/s.Thiru Arooran Sugars Private Limited, at registered office of the Company at No.112, Uthamar Gandhi Street, Nungambakkam, Eldorado, Chennai 600 034. The statutory notice reads thus:

(For and on behalf of Mr.N.Sambasivam, Proprietor S.G.M.

*Lorry Service, 11, Prasanthi Nagar, Thiruppapuliur,
Cuddalore)*

To

*The Chairman and Managing Director
Thiru Arooran Sugars Limited
No.112, Uthaman Gandhi Salai
Nungambakkam, Eldorado, Chennai.*

Sir,

*Sub: Statutory Notice under Section 138(B) of the
Negotiable Instrument Act to pay the amount on the
dishonoured cheque - Reg.*



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Ref: Your cheque No.520610, dated 30.06.2019 for Rs.46,68,583/- State Bank of India, Nungambakkam, Chennai returned on 4th July 2019.

Under instructions from my client, I give you the following notice. My client states tht you Company owes a sum of Rs.1,40,02,583/- (Rupees One crore forty lakhs two thousand five hundred and eighty three only) towards transport charges. My client states that inspite of repeated demands you have not paid the amount due to my client. Hence my client has filed a petition before the Hon'ble National Company Law Tribunal (Principal Bench) at Chennai in IBA 109(11)56/1B/CB/C-2-2019 against your company for the recovery of the amount due to my client.

Before the above said Tribunal you have agreed to pay the amount due in three instalments of Rs.46,67,000/- each. As per the schedule you have agreed to pay the amount dues as per the table set out, below.

1st instalment of Rs.46,67,000/- on 30.04.2019.

2nd Instalment of Rs.46,67,000/- on 31.05.2019 and

3rd instalment of Rs.46,68,583/- on 30.06.2019

My client states that the 1st instalment cheque dated 30.04.2019 presented by my client was already



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returned by your banker for the reason "Funds insufficient".

As against the same my client has already filed a complaint before the Hon'ble Judicial Magistrate No.II at Cuddalore.

My client states that as per your instructions and as per the order of the Company Tribunal the second instalment cheque for Rs.46,67,000/- bearing cheque number 520607 dated 31.05.2019 State Bank of India, Chennai was presented through my client's bank M/s. Lakshmi Vilas Bank Ltd., Cuddalore branch was presented on 10.06.2019 and the same was returned by your banker for the reason 'Funds insufficient' in your bank account to honour the cheque. On receipt of the returned cheque my client again approached you in person and through phone and demanded you to make the payment.

My client states that knowing fully well of the insufficient funds in your bank account, you have issued the cheque with anintention to cheat my client and knowing the consequences thereon. My client further states that you have issued the cheque based on the undertaking given by you before the Hon'ble National Company Law Tribunal, Chennai. You have not only cheated my client but also you



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have failed to comply with the written undertaking submitted before the Hon'ble Tribunal.

Therefore you are hereby called upon to pay a sum of Rs.46,67,000/- on your returned cheque mentioned above within 15 days time from the date of the receipt of this statutory notice. Please note that on your failure to make payment within the above stipulated time, penal action will be taken against you under Section 138 and 142 of the Negotiable Instruments Act, apart from the civil action to recover the above said amount and thereupon you will be held liable for all the costs and consequences arising thereon."

Similar notices were sent to the same Managing Director of M/s.Thiru Arooran Sugars Private Limited and M/s.Shree Ambika Sugars Limited. Thus it is seen that the notices were actually intended to the company also. Even in the complaint it is specifically stated that M/s.Thiru Arooran Sugars Private Limited and M/s.Shree Ambika Sugars Limited, in order to avoid rigor of CIRP, accepted their legal liability to pay the complainant and issued cheques, consequent upon which the Application filed by the complainant before the National Company Law



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Tribunal Division Bench, Chennai, under Insolvency and Bankruptcy

Code, 2016, was dismissed as withdrawn. It is the contention of the complainant that immediately realising the mistake committed by him in not impleading the company, he filed appropriate petitions before the trial court. In the decision in ***U.P. Pollution Control Board vs. Messrs Modi Distillery and others*** (cited supra), it has been held that the prosecution and trial against the accused cannot be allowed to be defeated merely because of a technical and a curable defect in the complaint filed under Section 200 Cr.P.C. The facts of the said case are that the U.P.Pollution Control Board instead of launching a prosecution against M/s. Modi Industries Ltd., filed a private complaint against the Chairman, Vice Chairman, Managing Director and Members of Board of Directors of the Company for polluting the Kali River through the Kadrabad Drain while manufacturing Industrial alcohol. The High Court while exercising the jurisdiction under Section 482 Cr.P.C. quashed the private complaint filed under Section 200 Cr.P.C. on the ground that there could no vicarious liability saddled on the Chairman, Vice Chairman, etc., unless there was a prosecution of the Company. On an



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appeal to the Hon'ble Supreme Court , it was held thus:

6. On a combined reading of the provisions contained in sub-sections (1) and (2), we have no doubt whatever that the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors of Modi Industries Limited, the company owning the industrial unit Modi Distillery could be prosecuted as having been in charge of and responsible to the company, for the business of the industrial unit Modi Distillery owned by it and could be deemed to be guilty of the offence with which they are charged. The learned Single Judge has failed to bear in mind that this situation has been brought about by the industrial unit viz. Modi Distillery of Modi Industries Limited because in spite of more than one notice being issued by the Board, the unit of Modi Distillery deliberately failed to furnish the information called for regarding the particulars and names of the Managing Director, Directors and other persons responsible for the conduct of the Company. Having wilfully failed to furnish the requisite information to the Board, it is now not open to the Chairman, Vice-Chairman, Managing Director and other members of the



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Board of Directors to seek the court's assistance to derive advantage from the lapse committed by their own industrial unit.

The learned Single Judge has focussed his attention only on the technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call upon the appellant to make the formal amendments to the averments contained in para 2 of the complaint so as to make the controlling company of the industrial unit figure as the concerned accused in the complaint. All that has to be done is the making of a formal application for amendment by the appellant for leave to amend by substituting the name of Modi Industries Limited, the company owning the industrial unit, in place of Modi Distillery. 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-section (1) or (2) of Section 47 of the Act



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unless there was a prosecution against 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 para 2 has to be construed in the light of the averments contained in paras 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."

The learned Trial Court Judge had taken into consideration the entire facts of the case and allowed all the petitions filed by the respondent/complainant. It is also trite law that non quoting of provision



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of law in a petition is not a ground for dismissing the same.

9. In view of the reasons stated by me, I do not see any reason to allow the present Criminal Revision Cases.

10. In the result,

- i. all the Criminal Revision Cases are dismissed. Consequently connected miscellaneous petitions are closed.
- ii. the orders dated 16.05.2023 in C.M.P. Nos.15483, 15482, 15484, 15485, 15486 and 15487 of 2022 in STC Nos.1095, 1096, 1098, 824, 823, and 1097 2019 , on the file of the Judicial Magistrate III, Cuddalore, are confirmed.

13.09.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
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To

Judicial Magistrate III, Cuddalore.

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