IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2023

Coram:

The Hon'ble Mr.Justice V.SIVAGNANAM

Crl.O.P.Nos.22426 & 18485 of 2021
and Crl.M.P.Nos.12186 & 10138 of 2021

Priyadarshini
...Petitioner in Crl.O.P.No.22426 of 2021

Ravichandran
...Petitioner in Crl.O.P.No.18485 of 2021

Versus

T.Saravana
...Respondent in both Crl.O.Ps

Common Prayer:

These Criminal Original Petitions are filed under Section 482 of Cr.P.C praying to call for the records pertaining to the complaint pending in S.T.C.No.63 of 2020 on the file of the learned Judicial Magistrate cum Fast Track Judge – II, Erode and quash the same in so far as the petitioners are concerned, as arbitrary, unsustainable in law and on facts.

For Petitioner in both Crl.O.Ps	:	Mr.AR.M.Arunachalam
For Respondent in both Crl.O.Ps	:	Mr.A.Sivaji

COMMON ORDER

These criminal original petitions have been filed by the petitioners seeking to quash the complaint in S.T.C.No.63 of 2020 on the file of the learned Judicial Magistrate cum Fast Track Judge – II, Erode.

2. The case of the prosecution is that National Sewing Thread Co. Ltd. (A1) is a company, in which, one B.Venkatesan (A2) was the Managing Director and Ramachandran (A3), Purushothaman (A4), Priyadarshini (A5/petitioner in Crl.O.P.No.22426 of 2021) & Ravichandran (A6/petitioner in Crl.O.P.No.18485 of 2021) were whole time Directors. The A1 company sought a sum of Rs.26,92,510/- as financial assistance from the respondent/complainant and hence, the respondent/complainant also gave the said amount to the A1 company. The A1 company agreed to pay 12% interest for the loan amount obtained from the respondent/complainant. So, in order to pay the outstanding loan amount of Rs.26,92,510/- and interest of Rs.2,90,792/- to the respondent/complainant, on behalf of A1 company, A2 (Managing Director of A1 company) had

issued two cheques drawn on ICICI Bank, South Car Street, Chidambaram Branch, to the respondent/complainant. The A2 had issued the said cheques with the knowledge and consent of A3 to A6. The details of those two cheques are as follows:

No.	Date	Cheque No.	Amount
1	26.09.2019	002974	Rs.26,92,510/-
2	26.09.2019	002973	Rs.2,90,792/-

When the respondent/complainant presented the above cheques in Punjab National Bank, Cutcherry Road, Erode Branch, for collection, the same were returned for the reason, “Account Blocked” and “Payment Stopped by Drawer”. Hence, the respondent/complainant sent a Statutory Notice dated 25.10.2019 to A1 to A6, however, even after the receipt of said notice, A1 to A6 did not send any reply to the respondent/complainant. Hence, the aggrieved respondent/complainant had filed a complaint in S.T.C.No.63 of 2020 before the Judicial Magistrate Fast Track Court No.2, Erode, praying to punish A1 to A6 for the offence committed by them under Sections 138 & 141 of the Negotiable Instruments Act (hereinafter referred to as 'NI Act').

3. The learned counsel for the petitioners submitted that the petitioners had resigned from A1 company on 24.08.2019 and their resignation was also accepted by the Registrar of Companies. After their resignation, the petitioners did not involve in the day-to-day affairs of A1 company. He also submitted that the petitioners are no way connected to the issuance of disputed cheques dated 26.09.2019 since the date of disputed cheques is 26.09.2019, whereas, the date of resignation of the petitioners is 24.08.2019 which means the disputed cheques were issued after the resignation of petitioners. So, the proviso to Sections 138 & 141 of the NI Act would not be attracted against the petitioners.

3.1. The learned counsel brought to the notice of this Court that the National Company Law Tribunal, Special Bench, Chennai vide its liquidation order dated 28.08.2019 in IBA.No.622 of 2019, wound up the A1 company and appointed one Mr.V.Duraisamy as an Interim Resolution Professional (IRP) to monitor the affairs of A1 company. Thereafter, the said IRP sent an e-mail dated 03.09.2019 to the ICICI Bank, Chidambaram Branch, requesting to freeze the Bank Account of A1 company. Acceding the request of IRP, ICICI Bank, Chidambaram Branch had freezed the current Bank Account of A1 company. So, there is no possibility for A1 company to issue the disputed cheques when it was under the control of IRP. Therefore, the learned counsel submitted that the complaint filed by the respondent is unsustainable in law and the same is liable to be quashed.

3.2. In support of his submissions, the learned counsel placed reliance on the judgment passed by the Hon'ble Supreme Court in the case of ***Ashoke Mal Bafna Vs. Upper India Steel Manufacturing and Engineering Company Limited*** reported in ***(2018) 14 SCC 202,*** wherein, it had held as follows:

> *"9. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the company and in charge of and responsible for the conduct of the business at the time of commission of an offence will be liable for criminal action (See Pooja Ravinder Devidasani v. State of Maharashtra).*
>
> *10. In other words, the law laid down by this Court is that for*

making a Director of a company liable for the offences committed by the Company under Section 141 of the Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company.

11. Turning to the case on hand, admittedly the cheques dated 28.12.2004 were issued while the appellant was Director of the Company with validity for a period of six months but during that period they were not presented for realization at the Bank. The appellant has resigned as Director w.e.f 02.01.2006 and the fact of his resignation has been furnished by Form 32 to the Registrar of Companies on 24.03.2006 in conformity with the rules. Thereafter, the appellant had played no role in the activities of the defaulter Company. This fact remains substantiated with the statement filed by the default Company on 20.02.2006 with the Registrar of Companies that in an advertisement of the Company seeking deposits (Annexure P-3), only the names of three Directors of the Company were shown as involved in the working of the Company and the name of appellant was not therein. Indisputably, therefore, the cheques bounced on 24.08.2006 due to insufficient funds were neither issued by the appellant nor the appellant was involved in the day-to-day affairs of the company."

4. The learned counsel appearing for the respondent contended that it is not the dispute that the petitioners were working as Directors in A1 company and they were involving in the day-to-day affairs of the A1 company. In fact, at the time of filing of the complaint, the respondent was

not aware about the resignation of petitioners. He further contended that the cheques issued are post-dated cheques and the same were issued on 04.07.2019 i.e., prior to the resignation of petitioners. That apart, A2 (Managing Director of A1 company) had issued the disputed cheques with the knowledge and consent of A3 to A6 (Directors of A1 company). Being one of the Directors of A1 company, the petitioners are having the responsibility to pay the outstanding amount. Therefore, the learned counsel prayed for dismissal of this petition. In support of his submissions, the learned counsel relied on the judgment passed by the Hon'ble Apex Court in ***Criminal Appeal Nos.170 to 172 of 2023 dated 15.03.2023 [Ajay Kumar Radheyshyam Goenka Vs. Tourism Finance Corporation of India Ltd.],*** wherein, it has held that *where the proceedings under Section 138 of the NI Act had already commenced and during the pendency the plan is approved or the company gets dissolved, the directors and the other accused cannot escape from their liability by citing its dissolution. What is dissolved is only the company, not the personal penal liability of the accused covered under Section 141 of the NI Act. They will have to continue to face the prosecution in view of the law laid down in Aneeta*

Hada (supra). Where the company continues to remain even at the end of the resolution process, the only consequence is that the erstwhile directors can no longer represent it.

5. Heard the learned counsel on either side and perused the materials available on record.

6. From a perusal of the complaint filed by the respondent, it is seen that the petitioners are A5 & A6 in S.T.C.No.63 of 2020 before the Judicial Magistrate Fast Track Court No.2, Erode. It is also seen that the A1 company had obtained a sum of Rs.26,92,510/- as loan from the respondent and after obtaining the said loan, the A1 company had paid him interest at the rate of 12% for the loan amount from 01.04.2017 to 31.03.2018. While so, on 04.07.2019, the respondent had insisted the A1 company to make payment of principal sum of Rs.26,92,510/- and interest sum of Rs.2,90,792/- and hence, in order to pay the same, A2 (Managing Director of A1 company) had issued two post-dated cheques dated 26.09.2019 to the respondent, but, when the respondent presented the said cheques for

collection, the same were returned for the reason "Account Blocked" and "Payment stopped by drawer". Hence, the aggrieved respondent had issued a Statutory Notice dated 25.10.2019 to A1 to A6, however, there was no response for the said notice.

7. According to the petitioners, they resigned from A1 company on 24.08.2019 and after their resignation, they did not involve in the day-to-day affairs of A1 company. Hence, they are not responsible to the cheques which were dishonoured on 27.09.2019.

8. At this point of time, this Court feels that it would be appropriate to discuss about the judgment relied on by the learned counsel on either side.

8.1. The learned counsel for the petitioners placed reliance on the judgment passed by the Hon'ble Apex Court in the case of ***Ashoke Mal Bafna Vs. Upper India Steel Manufacturing and Engineering Company Limited*** reported in ***(2018) 14 SCC 202.*** In the said case, the Hon'ble Supreme Court had held that to fasten vicarious liability under Section 141 of the NI Act on a person, the complainant should specifically show as to how and in what manner the accused was responsible. As far as this case is concerned, the petitioners had resigned from the A1 company on 24.08.2019. Though the respondent had stated in his complaint that the cheques dated 26.09.2019 were issued on 04.07.2019 i.e., prior to the resignation of petitioners, he has not produced any documentary evidence before this Court to prove the same. When there is no such proof, it cannot be said that the petitioners are vicariously liable for the activities of A1 company and they are liable for the offences committed by the A1 company under Section 141 of the NI Act.

8.2. The learned counsel appearing for the respondent placed reliance on the judgment passed by the Hon'ble Supreme Court in ***Criminal Appeal Nos.170 to 172 of 2023 dated 15.03.2023 [Ajay Kumar Radheyshyam Goenka Vs. Tourism Finance Corporation of India Ltd.].*** In the said case, the appellant is a signatory of the cheque as well as the Promotor and Managing Director of the accused company which availed loan from the respondent therein. That apart, the appellant therein had signed the loan agreement on behalf of the accused company. Hence, the Hon'ble Apex Court had dismissed the appeals filed by the appellant therein by holding that even the company gets dissolved during the pendency of proceedings under Section 138 of the NI Act, its Directors cannot escape from their personal penal liability by citing its dissolution. However, in the present case, the petitioners are not signatories of the disputed cheques. Hence, the said judgment is not applicable to the case on hand.

9. In overall consideration, this Court comes to the conclusion that the ingredients required for the offence under Sections 138 & 141 of the NI Act are not made out against the petitioners herein and hence, the complaint filed by the respondent is unsustainable in law.

10. At this juncture, it is pertinent to point out that the Hon'ble Supreme Court has discussed in detail about the inherent powers of the High Courts under Section 482 Cr.P.C in the following cases:

(i) R.P.Kapur Vs. The State of Punjab reported in ***AIR 1960 SC 866***

(ii) State of Haryana & Ors. Vs. Ch.Bhajan Lal & Ors. reported in

AIR 1992 SC 604

(iii) M/s.Neeharika Infrastructure Pvt. Limited Vs. State of Maharashtra & Ors. reported in ***2021 SCC Online SC 315***

10.1. In the case of ***R.P.Kapur Vs. The State of Punjab*** reported in ***AIR 1960 SC 866,*** the Hon'ble Supreme Court has held as follows:

> "*6. .... It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the*

High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

10.2. Further, in the case of ***State of Haryana & Ors. Vs. Ch.Bhajan Lal & Ors.*** reported in ***AIR 1992 SC 604,*** the Hon'ble Supreme Court issued seven guidelines to be followed by the High Courts in the exercise of its inherent power vested by Section 482 Cr.P.C to quash the FIR/complaint, which are as follows:

> "*(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
>
> *(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
>
> *(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
>
> *(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for*

proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

10.3. Similarly, in the case of ***M/s.Neeharika Infrastructure Pvt. Limited Vs. State of Maharashtra & Ors.*** reported in ***2021 SCC Online SC 315,*** the Hon'ble Apex Court has observed as follows:

"80. ...., our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the

criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482

Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to *give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.*

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

11. It is to be noted that the present case duly meets the parameters laid down by the Hon'ble Supreme Court in the decisions cited *supra*.

12. Considering the above facts and circumstances of the case and in the light of the dictum laid down by the Hon'ble Apex Court in the decisions cited *supra*, these criminal original petitions are allowed and the complaint in S.T.C.No.63 of 2020 on the file of learned Judicial Magistrate cum Fast Track Judge – II, Erode is hereby quashed. Consequently, connected miscellaneous petitions are closed.

19.09.2023

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Index: Yes/No
Speaking Order (or) Non-Speaking Order

To

1.The Judicial Magistrate
cum Fast Track Judge – II,
Erode.

2.The Public Prosecutor,
High Court, Madras.

V.SIVAGNANAM, J.

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Crl.O.P.Nos.22426 & 18485 of 2021

19.09.2023