



Crl OP No. 21686 / 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

**Criminal Original Petition No. 21686 of 2019
and
Crl.M.P. No.11217 of 2019**

Arun Kumar Joy

... Petitioner

Versus

S.Ponnambalam

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in S.T.C.No.346 of 2018 pending on the file of the learned Judicial Magistrate Fast Track Court, Magistrate Level II, Poonamallee, quash the same.

For Petitioner : Mr. V.Ezhilan

For Respondent : No appearance

ORDER

The petition is to quash the private complaint in S.T.C.No. 346 of 2018 filed for the alleged offence under Section 138 of Negotiable Instruments Act, 1881.



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2. It is alleged in the complaint that the accused had purchased waterproofing compound constructions chemicals and issued a cheque for Rs.17,69,292/- dated 16.08.2017 towards the sale consideration for the said material. The said cheque was presented for collection and the same was dishonoured for the reason “Exceeds arrangements’. Though statutory notice was sent to the accused, the accused had not made payment.

3.The learned counsel for the petitioner would submit that the cheque was issued in the name of the company by name Joyross Technical Services (P) Ltd.,in which, the petitioner is the Managing Director. However, without arraying the company as accused, the petitioner/Managing Director alone is sought to be prosecuted. The learned counsel for the petitioner would further submit that this is in violation of the settled position of law that without maintaining the prosecution against the company, the Managing Director or other Directors who are vicariously liable cannot be prosecuted.



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4. Though the notice was served on the respondent, none has entered appearance on behalf of the respondent.

5. The impugned complaint has been filed against the petitioner in his capacity as the Managing Director of Joyross Technical Service (P) Ltd. The cheque was issued by the company Joyross Technical Service (P) Ltd. However, the company has not been shown as an accused. In view of the settled position of law reiterated by the Honourable Supreme Court in several decisions that where the cheque is issued by the company, the Directors cannot be prosecuted individually if the company is not an accused. The relevant observations of the Honourable Supreme Court in ***Aneeta Hada and Ors. vs. Godfather Travels and Tours Pvt. Ltd. and Ors*** reported in ***(2012) 5 SCC 661*** is extracted hereunder :

"58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in



the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh (supra) which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (supra) is overruled with the qualifier as stated in paragraph 37. The decision in Modi Distilleries (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove."



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6.The above observations squarely apply to the facts of the instant case. Hence, the impugned private complaint is quashed.

7.Accordingly the criminal original petition is allowed.
Consequently, the connected miscellaneous petition is closed.

14.03.2023

dk

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Judicial Magistrate
Fast Track Court
Magistrate Level II
Poonamallee.



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SUNDER MOHAN, J

dk

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