IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.No.22449 of 2021
and
Crl.M.P.No.12208 of 2021

Boomadevi ... Petitioner

Vs.

1.S. Rajesh Kumar,
Proprietor,
Sai Green House, 6, Bharathiyar Lane,
Palavanthangal, Chennai – 600 114.

2.M/s.PRC International Hotels Private Ltd.,
by its Managing Director, G. Senthil Kumar,
F-1, First Floor, Land Marvel,
New No.30, Old No.37/4, Vijayaraghava Road,
T.Nagar, Chennai – 600 017.

3.G. Senthil Kumar,
Managing Director,
PRC International Hotels Private Limited,
No.17, North Boag Road,
T.Nagar, Chennai – 600 017.

4.G. Kanakasubbu,
Director, PRC International Hotels Private Limited,
Old No.37/4, New No.30, VRC Road,
T.Nagar, Chennai – 600 017. ... Respondents

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to C.C.No.351 of 2019 pending on the file of learned Judicial Magistrate, (Fast Track Court) Alandur, Chennai.

For Petitioner ... Mr. C.S.S. Pillai

For Respondents ... Mr. B. Janakiram

ORDER

This Criminal Original Petition is filed to call for the records pertaining to C.C.No.351 of 2019 pending on the file of learned Judicial Magistrate, (Fast Track Court) Alandur, Chennai.

2. The learned counsel appearing for the petitioner submitted that the petitioner is the 4^{th} accused in C.C.No.351 of 2021 on the file of the learned Judicial Magistrate, Fast Track Court, Alandur, Chennai. The learned counsel further contended that the petitioner had ceased to be the Director of the first accused company from 03.07.2017, to the effect, she intimated the fact of resignation to the Registrar of the Company under Form No. DIR-11 and uploaded in the website on 03.07.2017. The

disputed cheque was given on 12.07.2019 for a sum of Rs.46 lakhs after ceased to be a Director from the company. Further contended that, in the complaint, there is no averment that this petitioner/4th accused is incharge and responsible for conducting the business and day to day affairs of the first accused company.

2.1 Further, contended that the complainant itself in paragraph No. 6 of the complaint, it is specifically averred that the complainant gave money on the instruction of second accused, the third accused received the amount and promising the complainant to repay the said amount with 18% interest; further in the paragraph No.7 of the complaint, it is specifically averred that on demand, the second accused in his capacity as Managing Director of first accused, had drawn and issued the disputed cheque in favour of the complainant. In such circumstances, in the absence of any pleadings and averments that the petitioner/4th accused is incharge and responsible for conducting the business on day to day affairs of the accused. Apart from specific pleadings of the complainant himself that on the instruction of the second accused, third accused received amount and on demand, the second accused in his capacity as Managing Director, issued the disputed cheque for Rs.46 lakhs, therefore, no offence is made out against the petitioner / 4th accused for prosecuting for the offence under Section 138 of Negotiable Instruments Act.

2.2 To support his argument, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in ***(2005) 8 SCC 89*** and ***(2010) 3 SCC 330*** and another Supreme Court judgment in ***Crl.A.No.879 of 2023*** in ***Ashok Shewakramani & Ors. vs. State of Andhra Pradesh & Another.***

2.3 Further contended that though petitioner is stated as a Director in the absence of any participation in day to day affairs of the company, she cannot be prosecuted for the offence committed by other Directors and hence, prayed to quash the proceedings against this petitioner/4th accused.

3. The learned counsel appearing for the respondent/complainant objected the argument of the learned counsel for the petitioner. Further submitted that the contention of the petitioner that the petitioner ceased to be the Director of the first accused company from 03.07.2017 is not supported by any material document and further, the document relied on by the petitioner in Form No. DIR-11, in the column 6, stated that *"whether*

confirmation is received from the company", it is mentioned as 'No'. Therefore, resignation of Director of the petitioner from 03.07.2017 is not supported by any material, therefore, she continues as a Director of the company and she is liable to be prosecuted for the offence committed by the Company, in a capacity as a Director of the company.

3.1 The learned counsel further contended that in the paragraph No.6 of the complaint, he specifically averred that the complainant states that the 2 to 4 accused were actively participating in day to day affairs on behalf of the first accused, as such, all are liable and answerable for the act as done by the other Directors legally, it is enough to meet the requirement of Section 141 of Negotiable Instruments Act.

3.2 To support his argument, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in ***AIR 2022 SC 4883***. Therefore, the averment in the paragraph No.6 of the complaint is enough to fulfil the requirement of Section 141 of Negotiable Instruments Act and the complaint is to proceed and trial has to be conducted and it is not proper to quash the criminal proceedings and hence, pleaded to dismiss the criminal original petition.

4. I have considered the rival submissions and perused the records.

5. The complainant case is as follows: -

the complainant is running the Construction and Developers Business for the past 20 years, in the name and style of M/s. Sai Green House. The first accused is firm incorporated under the Companies Act and second to fourth accused were Directors of the above said firm and incharge and responsible for conducting the business and day to day affairs of the firm. All are jointly doing the hotel business, at Chennai in the name and style of M/s.PRC International Hotels Private Limited, T.Nagar, Chennai. Further stated that the second accused as a Managing Director of the firm, had borrowed a sum of Rs.46 lakhs from the complainant during the period 2015 – 2017 to meet their urgent business rotation for the business firm. The said sum was given on the instruction of the second accused, the third accused received the amount on promising the complainant to repay the said amount with 18% interest per annum. Since the amount was not repaid, the complainant demanded to repay the amount. After repeated request, in part to discharge of the amount, the second accused as the Managing Director of the first accused had drawn and issued a disputed cheque bearing No.743379 drawn on Indian Overseas Bank, Commercial & Inst. Credit Branch, Chennai, in favour of the complainant. The complainant presented the cheque for collection with their bank M/s. Andhra Bank, Nanganallur Branch, Chennai on 31.08.2019 for encashment and the same was returned dishonoured for "Funds insufficient" on 13.08.2019 with a bank memo. Thereafter, complainant issued legal notice to the first accused through his counsel dated 09.09.2018 and the same was returned with an endorsement "Left". As per the returned cover, legal notice was issued to the second accused and the same was returned with an endorsement "Door Lock Intimation Delivered". Again, issued legal notice to the fourth accused. The 4th accused / petitioner received a notice and sent a reply dated 27.09.2019. Since the cheque amount remained unpaid, he filed a complaint under Section 138 of Negotiable Instruments Act, which is under challenge.

6. The contention of the petitioner that this petitioner / 4th accused ceased as the Director of the first accused from 03.07.2017 is not supported by material and the Form filed by the petitioner herein revealed that the fact of cessation of Director in the Company on 03.07.2017, whether confirmed by the company, the column No.6 says no.

7. Under these circumstances, in the absence of confirmation by the Registrar, this cannot be taken into consideration to support the contention of the petitioner. Coming to the next point, the learned counsel for the petitioner, specifically relied upon the pleading of the complainant in the complaint, in paragraph No.6 of the complaint, the complainant specifically stated that on the instruction of the second accused, the third accused received the amount from the complainant and promising the complainant to repay the said amount with interest at 18% per annum. In paragraph No. 7 of the complaint, it is specifically stated that towards the discharge of 3rd accused legal liability towards the complainant, the 2nd accused in his capacity as Managing Director of first accused, were drawn

and issued a cheque in favour of the complainant. Though in the paragraph No.6 of the complaint, generally stated that the 2 to 4 accused who were actively participating in the day to day affairs on behalf of the first accused, the subsequent pleadings of the complaint specifically stated about the role of second and third accused. Only on instruction of second accused, the third accused received the amount from the complainant. Further, in paragraph No. 7, it is specifically stated that only to discharge the liability of the third accused, the second accused in his capacity as a Managing Director issued the cheque. Therefore, the liability depends on the role one plays in the affairs of the company and not on resignation of status.

8. Under Section 141 of Negotiable Instruments Act, what is required is that the persons are sought to be made criminally liable should be at the time the offence was committed, was incharge of, and was responsible to the company for the conduct of the business of the company. Every persons connected with a company shall not to have within the ambit of the provision.

9. In this case, on fact, the specific averment stated that on the

instruction of second accused, the third accused received the amount from the complainant and only to discharge the liability of the third accused, the second accused in his capacity as Managing Director issued the disputed cheque. This case is fully supported by the principle stated by the Hon'ble Supreme Court in Crl.A.No.879 of 2023 in para 19, the Hon'ble Supreme Court considered the legal position under Section 141 of Negotiable Instruments Act, the relevant paragraphs reads as follows: -

> *"17. The learned counsel appearing for the second respondent-complainant firstly relied upon a decision of this Court in the case of S.P.Mani and Mohan Dairy v. Dr Snehalatha Elangovan1 and especially what is held in the concluding part of the said judgment in paragraph 47. He also placed reliance on various decisions which were considered by the High Court while rejecting the prayer made by the appellants under Section 482 of the Code for quashing the complaints.*
>
> *18. After having considered the submissions, we are of the view that there is non-compliance on the part of the second respondent with the requirements of sub-section 1 of Section 141 of the NI Act. We may note here that we are dealing with the appellants who have been alleged to be the Directors of the accused No.1 company.*

We are not dealing with the cases of a Managing Director or a whole time Director. The appellants Have not signed the cheques. In the facts of these three cases, the cheques have been signed by the Managing Director and not by any of the appellants.

19. Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it comes to a penal provision. The vicarious liability is attracted when the ingredients of sub-section 1 of Section 141 are satisfied. The Section provides that every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of business of the company, as well as the company shall be deemed to be guilty of the offence under Section 138 of the NI Act. In the light of sub-section 1 of Section 141, we have perused the averments made in the complaints subject matter of these three appeals. The allegation in paragraph 1 of the complaints is that the appellants are managing the company and are busy with day to day affairs of the company. It is further averred that they are also in charge of the company and are jointly and severally liable for the acts of the accused No.1 company. The requirement of sub-section 1 of Section 141 of the NI Act is something different and higher. Every person who *is sought to be roped in by virtue of sub-section 1 of Section 141 NI Act must be a person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company. Merely because somebody is managing the affairs of the company, per se, he does not become in charge of the conduct of the business of the company or the person responsible for the company for the conduct of the business of the company. For example, in a given case, a manager of a company may be managing the business of the company. Only on the ground that he is managing the business of the company, he cannot be roped in based on sub-section 1 of Section 141 of the NI Act. The second allegation in the complaint is that the appellants are busy with the day-to-day affairs of the company. This is hardly relevant in the context of sub section 1 of Section 141 of the NI Act. The allegation that they are in charge of the company is neither here nor there and by no stretch of the imagination, on the basis of such averment, one cannot conclude that the allegation of the second respondent is that the appellants were also responsible to the company for the conduct of the business. Only by saying that a person was in charge of the company at the time when the offence was* *committed is not sufficient to attract sub-section 1 of Section 141 of the NI Act. Sub-section 1 of Section 141 reads thus:*

> *"141. Offences by companies.- (1) If the person committing an offence under section 138 is a company, <u>every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deeded to be guilty of the offence and shall be liable to be proceeded against and punished accordingly</u>:*
>
> *Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:*
>
> *[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]"*

20. On a plain reading, it is apparent that the words "was in charge of" and "was responsible to the company for *the conduct of the business of the company" cannot be read disjunctively and the same ought be read conjunctively in view of use of the word "and" in between."*

10. In view of the above legal position, it is very clear that three categories of persons are brought within the purview of the penal liability through the legal fiction envisaged in Section 141, they are,

i) the company which committed the offence,

ii) everyone who was incharge of and was responsible for business of the company, and

iii) any other person who is a director or a manager, or a secretary or officer of the company, with whose connivance or due to whose neglect the company has committed the offence. (***Anil Hada V. Indian Acrylic Ltd.***)

11. In the present case, there is a specific averment in the complaint in paragraph Nos. 6 and 7 that on the instruction of second accused, the third accused received the amount and discharged the legal liabilities of third accused, second accused in his capacity as Managing

Director of the first accused issued the disputed cheque. Therefore, the liabilities depend on the role one plays in the affairs of the company and not on designation or status. Further, it is to be noted that there is no allegation against the petitioner / 4th accused that on the petitioner's connivance or due to connivance, the amount has been received and the cheque has been issued.

12. In the absence of any such allegation that the amount has been received with the connivance of petitioner and cheque has been issued. The petitioner cannot be roped with a liability of the dishonour of cheuqe issued by the second accused. Therefore, the liability depends of the role one plays in the affairs of the company and not designation or status. In this case, the amount has been received by the third accused on the instruction of the second accused to discharge the liability of third accused, second accused issued a cheque in his capacity as Managing Director. Therefore, the petitioner/4th accused cannot be roped for dishonour of cheque in this case.

13. Therefore, the criminal proceedings against the petitioner / 4th accused is unsustainable and misusing the process of law. Therefore, the criminal proceedings in C.C.No.351 of 2019 pending on the file of the learned Judicial Magistrate (Fast Track Court) Alandur, Chennai against this petitioner/4th accused is hereby quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

12.09.2023

Index : Yes/No
Neutral Citation : Yes/No
AT

To
The Judicial Magistrate, (Fast Track Court) Alandur, Chennai.

V.SIVAGNANAM ,J.

AT

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