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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.03.2023
Pronounced on : 17.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.No.23310 of 2019
and
Crl.M.P.No.12238 of 2019

M.V.Ganesan ... Petitioner/5th accused

Vs.

M/s.Narayan Sriram Investments Pvt.Ltd,
Rep. by its Authorised Representative
Mr.Ponmathan Executive (Legal)
No.142, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034. …Respondent/Complainant

Prayer: This Criminal Original Petition has been filed to call for the records in C.C.No.4638 of 2016 on the file of the FTC – II, Allikulam and to quash the same.

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For Petitioner : Mr.V.P.Sengottuvel Senior Counsel
assisted by M/sK.Indu Priya M/s.B.Logeshwaran

For Respondent : Mr.Shivakumar and Mr.Suresh

O R D E R

This petition has been filed to quash the complaint under Section 138 of Negotiable Instruments Act in C.C.No.4638 of 2016 on the file of FTC-2, Allikulam.

2.It is alleged in the complaint that the first accused namely M/s.Zylog Systems Ltd availed financial assistance of Rs.3,50,00,000/- (Rupees Three Crore Fifty Lakhs only) from the complainant and executed a loan agreement with the complainant on 28.03.2013. In discharge of the said liability, the first accused issued a post-dated cheque on 30.04.2013 for an amount of Rs.14,91,423/-. The said cheque was presented for collection and that was dishonoured. It is further alleged that the petitioner/A5 had signed the said cheque as authorised signatory on behalf of the first accused company. It is the case of

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the complainant that the petitioner is vicariously liable as an authorised signatory for the offence committed by the first accused company.

3.The learned counsel for the petitioner would submit that the petitioner is only an employee of the first accused company. He had resigned earlier on 05.04.2012 which was not accepted by the first accused company. Thereafter, he continued to work for the first accused company. He had sent another resignation letter dated 05.04.2013. A loan agreement was entered into between the first accused company and the complainant on 28.03.2013. As per the said loan agreement, post-dated cheques were issued by the first accused company and the petitioner as authorised signatory had signed those post-dated cheques. He had nothing to do with the affairs of the first accused company. He is an employee who resigned on 05.04.2013. When the cheque dated 30.04.2013 was presented for collection, he was not employed with the first accused company. The learned counsel also pointed out an order passed by this Court in Crl.O.P.No.7004 of 2014 filed by this petitioner seeking to quash acomplaint filed by another company. In the said order, this Court had referred to an affidavit filed by the Managing Director wherein, he had confirmed that the petitioner had resigned on 05.04.2013

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and he does not have any role in the company and quashed the complaint against the petitioner alone in that case. The learned counsel also referred to the Judgment of the Honourable Apex Court in ***Sunita Palita and others vs. Panchami Stone Quarry*** reported in ***(2022) 10 SCC 152.***

4.The learned counsel for the complainant would submit that admittedly the petitioner is the signatory to the cheque. As a signatory, he is liable for the offence under Section 138 of NI Act, 1881 committed by the first accused company. The learned counsel referred to the Judgments of the Bombay High Court in ***Rajeev Raj Kumar and others vs. State of Maharashtra*** reported in ***2019 (2) Mh.L.J. 628 and*** the Judgment of Calcutta High Court in ***Kundan Chakraborty vs Unknown*** dated 01.03.2019 wherein, it is held that a Director of company who is a signatory to the cheque would be in charge and responsible for the conduct of the business of the company.

5.Heard Mr.V.P.Sengottuvel, the learned Senior Counsel for the petitioner and Mr.Shivakumar and Mr.Suresh, the learned counsels appearing for the respondent.

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6.Admittedly, the petitioner is an authorised signatory who had signed the cheque dated 30.04.2013, which was post-dated. Further, it is also an admitted fact that the petitioner is not a Director of the first accused company. The only basis for adding the petitioner as an accused is he is a signatory to the cheque. In the Judgments relied upon by the learned counsel for the respondent the Directors who had signed the cheques were prosecuted and their prosecution was sustained. Hence, the Judgments relied upon by the learned counsel for the respondent is not applicable to the facts of this case. In this case, the petitioner is not a Director. A signatory to a cheque who is not a Director in the company may be liable if it is shown that he was in charge and responsible to the company for the conduct of its business. A Director who had signed the cheque would stand on a different footing than an employee who is just an authorised signatory of the company.

7.This Court in similar circumstances in respect of the very same petitioner had quashed the complaint by making the following observations:-

> *"7.On perusal of the records it is seen that the petitioner who is the fourth accused in the complaint has resigned from the company way back on 05.04.2013 and*

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the same was also accepted by the first accused company. That apart, an affidavit of undertaking has been given by one Ramanujam Sesharathnam who is the third accused in the complaint, wherein it is specifically stated that:

"5.I state that M.V.Ganesan had no personal roleto play in the dishonour of these cheques and was only acting at my behest and he was only the employee of the company and not connected with the business management of the company.

6. I state that M.V.Ganesan submitted his resignation by mail on 05.04.2013, however we have requested him to continue to do his work only because we require his assistance during the troubling period of the Company.

7. He also does not hold any stake in the Company nor he was or is responsible at any point of time regarding the day to day affairs or the business of the Company.

8. I hereby declare that in the event of any legal action being initiated against M.V.Ganesan on account of the dishonour of Company cheques, his liability may be eschewed in any Court of Law, Civil or Criminal, pertaining to the act of the Company cheques being dishonoured or the claims arising out of such Company dishonoured cheques.

8. For the foregoing reasons, the Criminal Original Petition is allowed and the proceedings in C.C.No.4712 of 2013 pending on the file of the learned

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XIV Metropolitan Magistrate, Egmore, Chennai, is quashed in sofar as the petitioner/A4 in concerned. The learned XIV Metropolitan Magistrate, Egmore, Chennai, is directed to complete the trial in respect of other accused within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed."

The said observations would squarely apply to the instant case as well. In this case also the affidavit of the said Ramanujam Sesharathnam has been filed stating that the petitioner is not in charge of the day to day affairs of the company. Hence, the proceedings against the petitioner/A5 alone is liable to be quashed.

8.However, it is made clear that any observations made by this Court in respect of this petitioner should not be construed in favour of the other accused. The learned Magistrate may expedite the process of trial and in any event complete it within a period of six (6) months from the date of receipt of copy of this order since the case is of the year 2014.

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9.With the above observations, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

17.03.2023

dk/ay

Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

SUNDER MOHAN, J

dk/ay

To
The FTC – II,

Allikulam.

Pre-delivery order in

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(1/2)

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