IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	24.01.2023
Pronounced on	01.03.2023

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Crl.O.P.Nos.25320 & 25323 of 2021
and
Crl.MP.Nos.13996 &13999 of 2021

Crl.O.P.Nos.25320 of 2021

1.K.A.Naushad
2.K.A.Noorsha ... Petitioners/Accused 1 & 2

Vs.

M/s Liya Creation,
rep. by Mr.Raj P.Jain,
Proprietor ... Respondent/complainant

Prayer:- This Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for records relating to C.C.No.875/2021 pending on the file of learned Metropolitan Magistrate (FTC-I) Allikulam, Egmore and quash the same.

Crl.O.P.Nos.25323 of 2021

1.K.A.Naushad
2.K.A.Noorsha ... Petitioners/Accused 1 & 2

Vs.

M/s Liya Creation,
rep. by Mr.Raj P.Jain,
Proprietor ... Respondent/complainant

Prayer:- This Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for records relating to C.C.No.1093 of 2021 pending on the file of learned FTC-I Metropolitan Magistrate Allikulam, Egmore and quash the same.

In both cases:

For Petitioners : Mr.B.Shruthan
For Respondent : Ms.Mehak Asrani for
Mr.Sanjay J.Raj Purohit

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in C.C.Nos.875 & 1093 of 2021 on the file of the learned Metropolitan Magistrate (FTC-I,), Allikulam, Egmore.

2.The petitioners are arrayed as accused 1 and 2 in C.C.Nos.875 &1093 of 2021 on the file of the learned Metropolitan Magistrate (FTC-I) Allikulam, Egmore. The respondent has preferred a complaint against the petitioners/A1 and A2 and others for the offence under Section 138 of the Negotiable Instruments Act-1881. The 4th accused is a firm namely M/s.Kans Wedding Centre and it was the customer of M/S.Liya Creation, who is the complainant herein. The complainant has supplied materials on credit basis and for which the 4th accused firm had issued cheques towards the repayment of the same. The accused 1 and 2 are the partners of the 4th accused firm. As per the ledger account of the complainant's proprietary concern, for the period between 01.04.2018 to 30.11.2019 the accused had purchased garments and other goods for a total sum of Rs.42,52,483.67 on credit basis. Out of the said amount Rs.9,50,120/- has been paid on various dates. The balance outstanding is Rs.33,02,354.67/-. The accused had issued a cheque dated 15.12.2019 bearing No.102466 for Rs.2,70,205/-towards the repayment of the part of the outstanding amount. When the cheque was presented for collection it was returned as 'funds insufficient' on 17.12.2019. After complying the legal mandates, the respondent has filed a complaints against the petitioners for the offence under Section 138 of the Negotiable Instruments Act-1881 (hereinafter referred as NI Act).

3. Heard the submissions made by the learned counsel on either side and perused the materials available on record.

4.The learned counsel for the petitioners submitted that the 3rd accused is the authorized signatory of the 4th accused firm and the 1st and 2nd accused are not in-charge of the regular affairs of the firm; there is no specific allegations against the petitioners 1 and 2 in the complaint that they have taken any active interest in the business of the partnership firm. The day to day activities of the firm are not done by the petitioners 1 and 2; for the purpose of Section 141 of the Negotiable Instruments Act-1881 those persons who were in-charge or responsible for the conduct of the business of the firm alone can be prosecuted and the petitioners 1 and 2 are unnecessary parties.

5.The learned counsel for the respondent submitted that only if the accused are allowed to undergo trial, it can be known whether they are in-charge of the affairs of the company. It is premature to presume that the petitioners 1 to 2 are not responsible for the day to day affairs of the firm. The petitioners 1 to 2 are equal partners and even the partnership deed would show that they are working partners. Since the petitioners are also aware of the transaction, they cannot disown their responsibility.

6.The one and only contention of the learned counsel for the petitioners is that there is no averment in the complaint to show that the petitioners 1 to 2 are responsible and in-charge of the day to day affairs of the firm and hence, they are unnecessary parties to the proceedings. As per Section 141 of NI Act if a person committed the offence under Section 138 of NI Act happens to be a company or a firm the person who was in-charge or responsible for the conduct of the business at the time of commission of the offence shall be deemed to be guilty.

7.The learned counsel for the respondent submitted that the entire liability is fixed upon all those persons who are responsible for the company and it is not necessary for the complainant to show how the accused could be aware of each and every transaction; but it is the accused who have to prove before the court that the offence was committed without their knowledge.

8.In support of the above contention, the judgment of the Hon'ble Supreme Court held in the case of **S. P.Mani & Mohan Dairy Vs. Snehalatha Elangovan** reported in **2022 SCC OnLine SC1238** is cited**.** In the said judgment it is held as under:

> *47. **Our final conclusions may be summarised as under:***
>
> ***a.) The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the***

criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to subsection (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

b.) The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Sections 138 and Section 141 respectively of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special *circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.*

c.) Needless to say, the final judgement and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners 'qua' the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.

d.) If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court.

9. The above judgement is squarely applicable to the facts of this case. It is seen in the complaint that the respondent has simply stated that the petitioners are the partners of the firm and all the accused had purchased the materials from the respondent. The respondent being a third party cannot know how the partners of the firm would be aware of its transactions and how diligently they could prevent the dishonour of cheques issued by the firm.

10.No doubt, 3rd accused, who is the authorized signatory of the firm. But as submitted by the learned counsel for the petitioners, the petitioners 1 and 2 are also working as partners and hence even without any specific avernments as to their specific role in the firm, there is prima facie reason to implead them as accused. It is for the petitioners to prove that the offence of dishonour of cheque for insufficient fund was committed without their knowledge and they had exercised due diligence to avoid such eventualities.

11.Unless the petitioners are subjected to trial, their specific roles play in the company can not be proved. It is premature to presume those facts now. Since the petitioners are working partners and they also actively participate in the affairs of the company, the proceedings against them can not be quashed for the reason stated by the petitioners. No prejudice would be caused to the petitioners if they could prove during the course of trial that they were not aware or in-charge of the affairs of the company. But, the presumption before the proof will cause prejudice for the complainant. Since the materials available are suggestive of the knowledge and involvement of the petitioner, I feel it is appropriate to subject the petitioner to undergo the process of trial.

In the result, these Criminal Original Petitions stand **dismissed**. Consequently, connected miscellaneous petitions are closed.

01.03.2023

Index : Yes/No
Internet : Yes/No
Speaking/ Non Speaking.
Neutral: Yes /No
jrs

R.N.MANJULA, J.

jrs

To
1.The FTC-I Metropolitan Magistrate,
Allikulam, Egmore.

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