



Crl OP No. 31843 / 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

**Criminal Original Petition No. 31843 of 2019
and
Crl.M.P. Nos.17434 and 17435 of 2019**

1.M/s.SR Marine Foods Private Ltd,
Represented by its Managing Director,
K.V.Ramana,
Reg Office : No.2A, Door No.AC5,
2nd Floor, 2nd Avenue,
Anna Nagar, Chennai – 600 040.

2.K.V.Ramana,
Managing Director,
M/s.SR Marine Foods Private Ltd,
Regd Office : No.2A, Door No. AC5,
2nd Floor, 2nd Avenue,
Anna Nagar, Chennai – 600 040.

3.Sunil Kanugolu,
Director (Retd),
M/s.SR Marine Foods Private Ltd,
Regd Office : No.2A, Door No. AC5,



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2nd Floor, 2nd Avenue,
Anna Nagar, Chennai – 600 040.,
4.Sushil Kanugolu,
Director,
M/s.SR Marine Foods Private Ltd,
Regd Office : No.2A, Door No. AC5,
2nd Floor, 2nd Avenue,
Anna Nagar, Chennai – 600 040.

... Petitioners

Versus

M/s.Shanson Logistics Private Ltd,
Rep by its Managing Director S.Padmanaban,
Regd Office : 1 / 66E, 6th Cross Street,
Thiruvallur Nagar,
Alandur,
Chennai – 600 016.

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records culminated in CC.No.8420/2018 on the file of the Metropolitan Magistrate Cum Fast Track Court – III Saidapet, Chennai, quash the same in so far as the 3rd and 4th petitioners are concerned.

For Petitioners : Mr. S.Vijayaganesh

For Respondent : Mr.P.Guna Raj



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ORDER

The petition is to quash the private complaint under Section 138 of Negotiable Instruments Act, 1881.

2.It is alleged in the complaint that the first petitioner company was due to pay a sum of Rs.15,64,490/- to the complainant and issued a cheque signed by the second accused/second petitioner/Managing Director. The said cheque was presented and returned unpaid. Though the statutory notice was sent to the company, Managing Director and other Directors, no payment was made.

3.The learned counsel for the petitioners would submit that the third petitioner was one of the Directors; and that he resigned from the company on 27.06.2012. The learned counsel produced Form 32 in support of his submission. He would further submit that though the fourth petitioner/fourth accused is a Director, he was not in charge and responsible to the conduct of business of the first accused company. The father namely Mr.K.V.Ramana/A2 is the Managing Director and he runs the company. The allegations in the complaint are not sufficient to



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prosecute him. The allegations are mere repetition of the words in the Section and there is no specific averment as to how the fourth petitioner is in charge and responsible to the first accused company for the conduct of its business of the first accused company. The learned counsel also stated that the company was taken over by the Resolution professional, pursuant to the insolvency proceedings initiated by one of the creditors to the company.

4.The learned counsel appearing for the complainant would submit that the third and the fourth accused/third and fourth petitioners are the sons of the second accused, and that they are actually running the business of the company. The allegations in the complaint disclose the offences against the petitioners and it is for the prosecution to adduce evidence before the trial Court in support of their case and prayed for dismissal of the quash petition.

5.Heard the learned counsel for the petitioners and the learned counsel for the respondent.



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6.This Court finds that the first accused is the company and the second accused is the Managing Director who issued the cheque.

Therefore, the complaint as against the first and second accused cannot be quashed as there are averments in the complaint to prosecute them.

As regards the third petitioner/accused, Form 32 produced by him shows that he resigned from the company on 27.06.2012. The cheque was issued on 10.03.2018 much after the third accused resigned from the company. Therefore, the third accused cannot be said to be a Director in charge and responsible for the conduct of the business of the first accused and hence the complaint as against him is liable to be quashed.

7.As regards the fourth accused, though there is a allegation that he was in charge and responsible for the conduct of the business of the first accused, there is no averment as to how he is in charge of conduct of the business of the first accused. The Judgments of the Honourable Apex Court in ***K.K.Ahuja vs. V.K.Vora and another*** reported in (2009) 10 SCC 48 and ***National Small Industries Corporation Limited vs. Harmeet Singh Paintal and another*** reported in (2010) 3 SCC 330 squarely apply to the facts of the instant case. Hence, the proceedings against the A4/fourth petitioner is also liable to be quashed.



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8. However, the learned counsel for the complainant submits that the fourth accused being a son of the second accused is actually involved in the day to day activities of the company. He further submitted that he may be given liberty to file a petition under Section 319 of Cr.P.C., during trial if he is able to produce any evidence showing that the fourth accused is in charge and responsible to the company for the conduct of its business. It is needless to say that if it appears from the evidence that any person has committed an offence, the complainant shall be at liberty to file a petition under Section 319 Cr.P.C., to add the said person as an accused.

9. With the above observations, the Criminal Original Petition is partly allowed in respect of A3 and A4 and dismissed in respect of A1 and A2. The trial Court may expedite the trial and in any event complete it preferably within a period of six (6) months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petitions are closed.

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Index: Yes/No

Speaking Order / Non-Speaking Order

NCC: Yes / No



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The Metropolitan Magistrate Cum Fast Track Court – III,
Saidapet,
Chennai.



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SUNDER MOHAN, J

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