



WEB COPY



Crl.O.P.(MD)No.3403 of 2020, etc., batch cases

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.03.2023

Delivered on : **02.06.2023**

CORAM:

THE HONOURABLE MRS.JUSTICE **R.THARANI**

**Crl.O.P.(MD) Nos.3403, 3413, 3423, 3436, 3417, 3425, 3554 and
3559 of 2020**

and

**Crl.M.P.(MD)Nos.1793, 1794, 1804, 1806,1810, 1811, 1824, 1825,
1832, 1833, 1856, 1857,1906, 1907, 1912 and 1913 of 2020**

Crl.O.P.(MD)No.3403 of 2020

1.S.Sirajudeen

2.Samsad Begam

... Petitioners / Accused Nos.3 & 4

Vs.

M/s.The National Small Industries

Corporation Ltd.,

(A Government of India Enterprise)

Rep. by its Senior Branch Manager,

P.S.Prem Anand

... respondent / Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the proceedings in S.T.C.No. 737 of 2016, pending on the file of the Fast Track Court No.II, Madurai and to quash the same insofar as the petitioners concern.

For Petitioners : Mr.G.Karuppasamy Pandiyan

For Respondent : Mr.N.S.Karthikeyan



COMMON ORDER

These petitions are filed to quash the proceedings in S.T.C.Nos. 606, 719, 735, 736, 737, 738, 739 of 2016 and 88 of 2017, on the file of the Fast Track Court No.II, Madurai.

2. The case against the petitioners is that the petitioners are one of the Directors of the M/s. Mantek Electrods Pvt. Ltd, Trichy, and that the second accused approached the respondent for financial assistance. The complainant – Corporation issued a loan of Rs.35,00,000/- under Raw Materials Assistance (RMA) Scheme. The petitioners are liable to pay the amount and they are liable for the cheques issued on behalf of the Company. Hence, the cases under Sections 138 and 142 of the Negotiable Instruments Acts, were registered against the petitioners, on the file of the Fast Track Court No.II, Madurai.

3. On the side of the petitioners, it is stated that the petitioners are the Directors . There is no nexus between the petitioners and the complainant. In paragraph No.4, it is specifically mentioned that the cheque leaves were issued only by the second accused. The only allegation against the petitioners is that they received legal notice on



21.12.2015. The ingredients under Section 200 of Cr.P.C were not made out. The petitioners and the respondent have no direct money transaction. The second accused alone has approached the respondent for financial assistance. The petitioners were not the executive directors. The petitioners are only non-executive Directors of the Company, they did not participate in day to day affairs of the Company. There is no specific role for the petitioners in the commission of offence. There is no legal enforceable debt existing against the petitioners. The alleged cheques were issued by force, in the capacity of the Director of the Company and the individuals have been wrongly arrayed parties to the proceedings. The complaints are barred by limitation. The petitioners are suffering from various ailments and prayed the cases to be quashed.

4. On the side of the petitioners, it is further stated that the second accused is the Managing Director of the first accused-Company, he is running the Company. The covering letter admitting the liability was issued only by the second accused. The partnership Firm was registered on 02.09.2013. The petitioners were retired from the Firm and a release deed was executed on 14.08.2014 and the same was registered on 16.04.2015. From 15.08.2013, the petitioners seized to be a partner. The petitioner-A3 is not the signatory of the cheque leaves.



WEB COPY



CrI.O.P.(MD)No.3403 of 2020, etc., batch cases

5. On the side of the respondent, it is stated that at the time of getting the loan, all the petitioners were partners in the Firm. All the eight cheques issued by the Firm were 'dishonored'. The Directors of the Company cannot be deleted from the cases. The petitioners retirement from the Firm was not intimated to the Bank. Rearranging the partnership cannot be a ground for deleting the name of the petitioners. Arbitration award was passed against the Directors in the year 2020. Only to drag on the proceedings, these petitions were filed.

6. On the side of the petitioners, it is stated that the person, who is dealing with the day to day affairs of the Company alone is responsible. The petitioners are not incharge of the day to day affairs and they are not liable. A judgment of the Hon'ble Supreme Court reported in **2015-3-SCC-378 (Pooja Ravinder Devidasani V. State of Maharashtra and another)** is cited, wherein, it is stated as follows:-

“13. "Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business



WEB COPY



of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

14. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfillment of the requirements under Section 141.”

7. On the side of the respondent, it is stated that the judgment cited on the side of the petitioners is with regard to the trial and against the conviction order and this judgment is not applicable to the facts of the present cases. Only after trial, the complainant can prove the part of the accused. No document was filed to prove that the petitioners are only Sleeping partners. Whether the petitioners are Sleeping partners can be proved only after the completion of the trial. The amount involved is more than Crores. The petitioners are cheating the Government Agencies, All the petitioners are family members and they



tried to cheat the Government Fund and prayed the petitions to be dismissed.

WEB COPY

8. The claim of the petitioners is that they are Sleeping Partners and they are not connected with the day to day affairs of the Company. Copy of the certificate of Registrar of Trichy, reveals that the petitioners are partners in the Firm and the Firm was registered on 02.09.2013. Copy of the partnership deed was not marked on the side of the petitioners. No document was filed on the side of the petitioners, to show that the petitioners were Sleeping Partners and that they are not involved in the day to day affairs of the Company.

9. It is seen that the release deed, dated 14.08.2014 was registered only on 16.04.2015. In the registration certificate, it is specifically mentioned that the first petitioner seizes to be a Director from 15.08.2014. The cheques were issued on 30.11.2015. Whether the second petitioner retired from the Firm, when the second petitioner retired from the Firm were not stated in the petition. In the copy of the agreement under the Raw Material Assistance Scheme, the petitioners herein have signed as the second sureties. In column No.31 of the



WEB COPY



CrI.O.P.(MD)No.3403 of 2020, etc., batch cases

agreement. It is specifically mentioned that the Corporation have the right to recover the same, personally from the Proprietor / Partners / Directors from the first surety and second surety jointly and severally. In Column No.34 (A), it is stated that the guarantor is liable to pay the amount. In the above circumstances, the petitioners have to prove that the petitioners are not liable to pay the amount and a detail trial is required in these cases.

10. Hence, in the above circumstances, these petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes/No
Index : Yes/No
Ls

.....2023

To

- 1.The Fast Track Court No.II,
Madurai.
- 2.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD)No.3403 of 2020, etc., batch cases

R.THARANI. J.

Ls

Pre-delivery order made in
**Crl.O.P.(MD)Nos.3403, 3413, 3423, 3436, 3417,
3425, 3554 and 3559 of 2020**

.....2023