IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.06.2024	Pronounced on: 28.06.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.10494 of 2024
& Crl.M.P.No.7159 of 2024

1. Mrs.M.Lalitha, Vice President (A3),
M/s.Ravindra Bharathi Educational Society,
Having office at No.23/812, Fathekhanpet,
Near Bus Stand, Nellore District, Andhra Pradesh.

2. Mrs.M.Rekah, Treasurer, (Presently A4; Initially A6),
M/s.Ravindra Bharathi Educational Society,
Having office at No.23/812, Fathekhanpet,
Near Bus Stand, Nellore District, Andhra Pradesh.

3. Mr.R.Babu Rao, Executive Member, (Presently A5; Initially A8),
M/s.Ravindra Bharathi Educational Society,
Having office at No.23/812, Fathekhanpet,
Near Bus Stand, Nellore District, Andhra Pradesh.

4. Mr.R.Murugan, Manager (Presently A6, Initially A9),
M/s.Ravindra Bharathi Educational Society,
No.23/812, Fathekhanpet, Near Bus Stand,
Nellore District, Andhra Pradesh. ... Petitioners/Accused

/versus/

M/s.MANSI FINANCE (Chennai) Ltd.,
SURESH BAFNA, Director,
No.59, 7th Floor, Orms Road,Prince Apartments, “A” Block,
Kilpauk, Chennai – 600 010. Rep. by its Manager/Power Agent,
A.Ramesh,
S/o.Agasthiyappan, aged about 61 years. .... Respondent/Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in S.T.C.No.1980 of 2023 on the file of Learned IV FTC Metropolitan Magistrate, George Town, Chennai and quash the same as against the petitioners herein.

For Petitioners	: Mr.P.H.Manoj Pandian, for M/s.AAV Partners
For Respondent	: Mr.A.Ramesh, Senior Counsel, for Mr.R.Ashwin.

ORDER

The petitioners are accused 3 to 6 in a private complaint initiated under Section 138 of N.I Act pending on the file of IV FTC, Metropolitan Magistrate, George Town, Chennai in S.T.C.No.1980 of 2023.

2. The petitioners are before this Court to quash the private complaint on the ground that there is no *prima facie* case made out as against these petitioners. According to the petitioners, they are innocent of the crime alleged and had no relation whatsoever with the commission of the crime. It is particularly contended by the petitioners that they are not in-charge of day-to-day affairs of 1st accused Society viz., *M/s.Ravindra Bharathi Educational Society* and the subject cheque was not issued with their knowledge.

3. Relying upon the judgment of the Hon'ble Supreme Court in ***Ashok Shewakramani and others -vs- State of Andhra Pradesh and another*** reported in ***2023 (8) SCC 473***, the Learned Counsel for the petitioners contend that there is no material evidence been produced in the complaint showing the involvement of the petitioners in the day-to-day affairs of the 1st accused Society. The petitioners are not signatory to the subject cheque. They are Office holders of the 1st accused Society. In the complaint, unless some sterling and incontrovertible material as against the accused available to prove their active involvement in the affairs of the accused Society, they cannot be implicated with criminal liability under Section 138 of N.I Act.

4. To buttress his submission, the Learned Counsel appearing for the petitioners rely upon the following judgments.

(i). ***Parthiban and others -vs- Action Textile Pvt Ltd*** unreported in ***Crl.O.P.No.21222 of 2019 dated 21.07.2022.***

(ii). ***Ashok Shewakramani and others -vs- State of Andhra Pradesh and another*** reported in ***(2023) 8 SCC 473***.

(iii). ***Siby Thomas -vs- M/s.Somany Ceramics Ltd*** reported in ***2023 LiveLaw (SC) 869.***

5. The Learned Counsel appearing for the petitioners submitted that a cheque for a sum of Rs.5,12,61,500/- dated 18.11.2019 issued on behalf of M/s.Ravindra Bharathi Educational Society, drawn on Andhra Bank, Kavuri Hills Branch, Hyderabad, Telangana, in favour of the complainant M/s.Mansi Finance (Chennai) Ltd., was signed by its President M.Subramaniam. The subject cheque when presented for collection returned with an endorsement ***'Account Blocked'*** and the same was intimated to the complainant on 19.11.2019. The Statutory notice to Society, its President and other office bearers were sent to the office address of the Society and not to the respective residential address. Therefore, there was no opportunity for the petitioners herein, who are not involved in day-to-day affairs of the Society, to know about the issuance of cheque from the account in the name of Society which has already been blocked and dishonour of the cheque for the said reason. The petitioners were therefore not in a position to reply to the said statutory notice. Taking advantage, with a vague allegation that all the accused knowingly issued the cheque without sufficient fund in their Bank which was already blocked, the present complaint is laid and therefore, same has to be quashed.

6. After notice, the respondent/complainant entered appearance through Counsel and made his submission.

7. The Learned Senior Counsel appearing for the respondent/complainant submits that the 2nd accused who is signatory to the subject cheque is the President of the Society and also husband of the 3rd accused, the 1st petitioner/A3 is the Vice President of the Society, the 2nd petitioner/A4 is the Treasurer of the Society, the 3rd petitioner/A5 is the Executive Member of the Society and 4th petitioner/A6 is the Manager of the Society. After executing pro-note for the loan availed, to discharge the said loan, the subject cheques were issued and the same was returned for the reason "Account Blocked." In the complaint, there is specific averments against these petitioners about their knowledge and therefore, the contention of the petitioners are not sustainable.

8. To buttress his submission, the Learned Senior Counsel appearing for the respondent rely upon the following judgments:-

(i). ***Abraham Memorial Educational Trust and others -vs- C.Suresh Babu*** reported in ***2012 (5) CTC 203***.

(ii). ***Dr.Mrs.Snehalatha Elangovan -vs- S.P.Mani and Mohan Dairy, Rep. by its Managing Partner, R.Mohanasundaram***, unreported in ***Crl.O.P.No.1063 of 2021 dated 16.02.2021.***

(iii). ***Ashok Shewakramani & others -vs- State of Andhra Pradesh and another*** reported in ***2023 INSC 692***.

(iv). ***M/s.Blue Planets Foods Pvt. Ltd. and Ors. -vs- State*** reported in ***MANU/TN/6079/2023.***

(v). ***S.P.Mani and Mohan Dairy -vs- Dr.Snehalatha Elangovan*** reported in ***2023 (10) SCC 685.***

9. Heard the Learned Counsel for the petitioners and the Learned Counsel for the respondent.

10. The complaint under Section 138 of N.I Act is filed against nine persons. The first accused is the Society and rest of the accused as persons in charge of administrating the Society. The cheque which is subject matter of the complaint is admittedly issued from the account maintained by the Society which was blocked when the cheque came for collection. M.Subramaniam, the second accused is the sole signatory of the cheque. To implicate other accused (i.e.,) accused 3 to 9, the complainant in the complaint states, “all the accused had knowingly issued the cheque without having sufficient finds in their Bank Account which was already blocked”.

11. The Learned Counsel for the petitioners state that the above averment in the complaint is not sufficient to sustain the complaint without specifying the role of the accused in the day to day administration of the Society, mere reference to their designation in the Society is not sufficient to attract the provisions under Section 146(1) of the N.I Act to create vicarious liability upon the petitioners.

12. Per contra, the Learned Senior Counsel for the respondent/complainant submitted that the cheque was issued to discharge the debt arose from money transaction between the parties. The pro-notes executed by A2(Subramaniam), A3(M.Lalitha) and A9 (R.Murugan) jointly while borrowing money from the complainant is the evidence to prove they were part of the day to day affairs of the Society and the cheques were issued with their knowledge.

13. The law on corporate criminal liability, qua Section 146 and Section 138 of N.I Act been under consideration by Courts for considerable time and the judgment relied on either side enlightens various spectrum of law passing through the factual prism. Whether to sustain prosecution against the persons responsible and incharge of the affairs of a Company at the time the offence committed, mere extraction of the expression used in the Section 141 of N.I Act is sufficient or sterling and incontrovertible material should find place in the complaint been discussed by the Hon'ble Supreme Court in ***S.P.Mani and Mohan Dairy -vs- Dr.Snehalatha Elangovan*** reported in ***2023 (10) SCC 685*** *(judgment dated 16.09.2022)* and ***Ashok Shewakramani & others -vs- State of Andhra Pradesh and another*** reported in ***2023 INSC 692,*** *(judgment dated 03.08.2023)* both the judgments are by the Bench consisting of two Judges. The latest judgment is ***Ashok Shewakramani*** *case* in that judgment ***S.P.Mani and Mohan Dairy*** *case* referred and distinguished.

14. In ***S.P.Mani & Mohan Dairy*** case, the Hon'ble Supreme Court summed up their conclusion on vicarious liability under Section 141 of N.I Act and the scope of Section 482 of Cr.P.C to quash the complaint as below:-

58.*Our final conclusions may be summarised as under:*

58.1. *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 sub-section (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.*

58.2. *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.*

58.3. *Needless to say, the final judgment 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.*

58.4. *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.*

15. In ***Ashok Shewakramani*** *case*, the Hon'ble Supreme Court after considering the ***S.P.Mani & Mohan Dairy*** *case* and the facts of the respective cases discussed, held as below:-

> ***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 Para 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 Accused 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 of the 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 deemed 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.*

21. *Therefore, even by giving a liberal construction to what is averred in Para 1 of the complaints, we are unable to accept the submission made by the learned counsel appearing for the second respondent that these averments substantially comply with sub-section (1) of Section 141 of the NI Act.*

16. By harmonious reading of these two judgments, it is clear that to proceed against any persons other than the drawer of the cheque by invoking Section 141 of the N.I Act, the complaint must necessarily disclose the twin requirements viz., (1) averment explicitly the accused person was in charge of <u>and</u> (2) responsible to the Company for the conduct of the business of the

Company.

17. In the case in hand, at paragraph No.7 of the complaint, it is stated that the complainant states that all the accused had knowingly issued the above said cheque without having sufficient funds in their bank account which was already blocked with an ulterior motive and malafide intention to cheat the complainant. Thus, all the accused had committed an offence under Section 138 of the N.I Act as newly amended r/w Section 406 and 420 of I.P.C and liable to the punished for imprisonment in accordance with law.

18. The plain reading of the entire complaint and paragraph '7' in particular which is extracted above, this Court is satisfied that the twin requirement under Section 141 of N.I Act is absent, hence the complaint is liable to be quashed against these petitioners.

19. In fine, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is also closed.

28.06.2024

Index :Yes.
Internet :Yes.
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Copy To:-
1. The IV FTC Metropolitan Magistrate, George Town, Chennai.

DR.G.JAYACHANDRAN,J.

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Pre-delivery order made in
Crl.O.P.No.10494 of 2024
& Crl.M.P.No.7159 of 2024

28.06.2024