IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.10.2024

Pronounced on :29.10.2024

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.13848 of 2024
and
Crl.M.P.No.8429 of 2024

Mrs.Anitha Kapoor .. Petitioner

/versus/

Mr.S.K.Gupta .. Respondent

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in S.T.C.No.2164 of 2021 pending on the file of V Metropolitan Magistrate cum Fast Track Court, Saidapet, Chennai and to quash the same.

For Petitioner :Mr.S.Thiruvengadam

For Respondent :Mr.M.Santhanaraman

ORDER

The petitioner herein is the third accused in S.T.C.No.2164 of 2021 on the file of V Metropolitan Magistrate-cum-Fast Track Court, Saidapet, Chennai.

2. The private complaint is in respect of dishonour of two cheques drawn from the account maintained by M/s HNS Chits Pvt Ltd, Chennai at Yes Bank, Parrys Corner, Chennai. The Company is the First Accused ) and its two Directors are the second and third accused. The Complaint states that the first accused Chit Fund Company run by the second and third accused had collected totally a sum of Rs.69,37,905/- between January 2018 and 02/05/2019 towards chit subscription from the complainant. After repeated demand two cheques for: (1) Rs.25,00,000/- dated 30/11/2020 and (2) Rs.28,73,000/-, dated 01/12/2020 signed and issued by the second accused returned without fund. For the statutory notice issued by the complainant, the 2nd and 3rd accused replied making unsustainable allegations. Hence, the Company and its two Directors being incharge of the day to day affairs of the first accused company are liable for prosecution under Sections 138 r/w 141 of Negotiable

Instruments Act 1881.

3. The petition to quash the complaint is filed on the ground that the third accused is neither signatory of the cheque nor the Director incharge of the day to day affairs of the Company. The cheques were issued by the second accused, who is all alone responsible for the day to day affairs of the Company. Except rendering her name, there is no other activity carried out by the petitioner. In the complaint, there is no averment as to the specific participation by this petitioner in the affairs of the Company. To the statutory notice, the petitioner has replied stating that she has nothing to do with the company and the transaction. Hence, the complaint being given against this petitioner is vexatious, so to be quashed.

4. The Learned Counsel for the respondent/ Complainant referring the averment in the complaint and the Master Data maintained by Registrar of Chits, submits that this petitioner is wife of the second accused, who is the signatory of the subject cheques. The first accused company consists of only two directors namely, Surendranath, who is the

second accused and his wife, Anitha Kappor, who is the third accused – petitioner herein. In the reply notice, except making unsustainable allegations, the petitioner has not stated that she has no knowledge about the cheques or she is not involved in the day to day affairs of the company. Even while cross examination of the complainant, no suggestion was put to the complainant about her non-participation in the affairs of the company. While so, the petitioner has to discharge the reverse burden and cannot seek for quash of the complaint.

5. In support of the respective argument, the following judgments are relied by the learned Counsels:

(1)S.P.Mani and Mohan Dairy –vs- Dr. Senhalatha Elangovan reported in [2023 (10) SCC 685].

(2)Suseela Padmavathi Amma –vs- Bharti Airtel Limited reported in [2024 SCC OnLine SC 311].

6. This Court is of the view that the issue is no more a *res integra,* after the judgement of the Hon'ble Supreme Court in *S.P.Mani and Mohan Dairy* case cited supra. In this judgment, the Hon'ble

Supreme Court has vividly explained the law of vicarious liability under corporate crime by analysing Section 141 of the Negotiable Instruments Act, 1881. In this judgment, the Hon'ble Supreme Court has distinguished Sections 141(1) and 141(2) of Negotiable Instrumetns Act and what is the essential element for implicating a person under this Section.

7. The summary of the final conclusion of the judgment in *S.P.Mani and Mohan Dairy* case cited supra at paragraph 58 is as below:

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

8. In *Susela Padmavathy Amma case* cited supra, the Hon'ble Supreme Court has observed that,

"20. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the company under Section 141 of the NI Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company.

21. In Sabitha Ramamurthy v. R.B.S. Channabasavaradhya [Sabitha Ramamurthy v. R.B.S. Channabasavaradhya, (2006) 10 SCC 581 : (2007) 1 SCC (Cri) 621], it was held by this Court that : (SCC pp. 584-85, para 7)

> "7. … it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused is vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company."
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> (emphasis supplied)

By verbatim reproducing the words of the section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under Section 141 of the NI Act."

9. Thus, a mere verbatim reproduction of the words in Section

141 of NI Act is not sufficient to prosecute a person vicariously but a statement how he/she as a Director of the company was responsible for the conduct of the business must be disclosed in the complaint. In the instant case, as per ROC record, the petitioner and her husband are the Directors of the First Accused Company. She in her reply had specifically claimed that she is not involved in the day to day affairs of the company. In the chief examination, the complainant had not disclosed how this petitioner was involved in the day to day affairs of the company and the issuance of the subject cheques. As laid by the Hon'ble Supreme Court in *para 58.4 of S.P.Mani case* to quash the complaint, the petitioner should have to place before the High Court some sterling incontrovertible material or acceptable circumstances to substantiate her contention. In this case the closure report of the Inspector of Police EOW, Chennai says, *"on the written complaint of one Gaurav Goyal is relied by the petitioner wherein the Investigating Officer has categorically stated that, during the course of investigation, documents received from ROC reflects Directors as (1) Surendranath and (2) Anitha Kapoor. The documents relating to Registrar of Chits discloses only Surendranath, as Director and further investigation and statement recorded discloses only R.J.Surendranath*

*participated and functioned as the foreman of HNS Chits Pvt Ltd and his wife Anitha Kapoor had not participated in any of the day to day management affairs of the Chits. Hence, on the above point of view, as I am the Investigating Officer, deleting the FIR named Accused No.2 while filing the final report.”*

10. The complaint specifically say that the liability arose due to the chit transaction with HNS Chits Pvt. Ltd. The closure report of the police is an acceptable document to hold the petitioner was not involved in the day to day affairs of the chit transaction. Therefore, it is a fit case to quash in exercise of the power under section 482 of the Code of Criminal Procedure as per the dictum of the Hon’ble Supreme Court.

11. Accordingly, **this Criminal Original Petition stands allowed.** The case in S.T.C.No.2164 of 2021 on the file of the V Metropolitan Magistrate Cum Fast Track Court, Saidapet, Chennai, is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

29.10.2024

Index:yes/no
Internet:yes/no
Speaking order/non speaking order
Neutral Citation:yes/no
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To:
V Metropolitan Magistrate cum Fast Track Court, Saidapet, Chennai

DR.G.JAYACHANDRAN,J.

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