



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRL.OP No. 19310 of 2022
& Crl. MP. Nos. 12711 & 12712 of 2022

- 1 M/S. PASSION HOTELS PRIVATE
LIMITED (ORBIS HOTEL) 1562 AVINASI ROAD
HOPE COLLEGE PEELAMEDU COIMBATORE 641 004.
- 2 P.BALAKRISHNAN
S/O. PURUSHOTHAMAN DIRECTOR M/S. PASSION
HOTELS PRIVATE LIMITED 2/19
THANNEERPANDHAL ROAD B.R. PURAM COIMBATORE.
- 3 JAYASUDHA
W/O. SRIHARI DIRECTOR M/S. PASSION HOTELS
PRIVATE LIMITED 2/19 THANNEERPANDHAL ROAD
B.R. PURAM COIMBATORE.
- 4 SRIHARI
S/O. BALAKRISHNAN DIRECTOR M/S. PASSION
HOTELS PRIVATE LIMITED 2/19
THANNEERPANDHAL ROAD B.R. PURAM COIMBATORE.

[PETITIONERS]

Vs

- 1 M.MANI

[RESPONDENT]

PRAYER : This petition has been filed under Section 482 of Cr.P.C, to call



for the records and quash the proceedings pending in C.C.no.302/2020 on the file of the Fast Track Court No.II at Magisterial Level Coimbatore for an offence u/s. 138 of NI Act 1881.

For Petitioners : Mr.C.Arun Kumar
For R1 : Mr.N. Manokaran

ORDER

The petitioners herein filed this petition to call for the records and quash the proceedings pending in C.C. No.302/2020 on the file of the Fast Track Court No.II at Magisterial Level Coimbatore.

2. The case of the prosecution is that the first accused and the accused 2 - 4 are the Directors of the company who are in-charge and responsible for the conduct of the business of the company. On 15.06.2019, the accused company borrowed a sum of Rs.6,50,000/- from the complainant. In lieu of the above transaction, the accused issued 2 post dated chques and thereafter the said cheques were presented before the bank and the same was returned as "Funds Insufficient". After issuing the notice the complainant filed the complaint before the Fast Track Court - II, Magisterial level, Coimbatore and the same was taken cognizance in C. C No. 302 of 2020. Challenging the said private complaint the petitioners filed this petition to quash the C.C No. 302 of 2020.



3. The learned counsel for the petitioners submit that as on date there is no legally enforceable liability between the petitioners and the complainant. Further, the petitioners had already paid the amount which borrowed from the complainant though he has not returned the cheque which was given as security. Further, the petitioners have filed O.S No. 1666 of 2019 to return the cheques which was given by the petitioners as security at the time of borrowal. Immediately as a counter blast to the said suit the complainant filed the present complaint against the petitioners. Further, the complainant was withdrawn the complaint given by him before the respondent police on 10.09.2019 and thereafter filed the complaint. But without mentioning about the said complaint the petitioner filed the private complaint in order to harass the petitioners. Further, in spite of giving suitable reply to the notice issued by the complainant he initiated the present proceedings. Furthermore, the second and third petitioners are directors of the company only because a person is Director of the company, does not make him liable. Hence, he prays to allow this petition. Further, he relied the judgment of the Ashok Shewakramani and others Vs. State of Andhra Pradesh and Anothers reported in 2023 8 SCC 473:

18. After having considered the submissions, we are of the view that there is non-compliance on the part of the second respondent with the requirements of sub-section 1 of Section 141 of the NI Act. We may note



here that we are dealing with the appellants who have been alleged to be the Directors of the accused No.1 company. We are not dealing with the cases of a Managing Director or a wholetime Director. The appellants Have not signed the cheques. In the facts of these three cases, the cheques have been signed by the Managing Director and not by any of the appellants.

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 .

4. The learned counsel for the defacto complainant submits that it is legally enforceable debt. Therefore, the cheque issued by the petitioners was presented for collection and the same was dishonoured. After issuing the notice he initiated the proceedings against the petitioner. Further, he stated that suit filed by the petitioner was dismissed by the Trial Court to that effect he produced the copy of the judgement. He prays to dismiss this petition.

5. Considering the facts of the case, admittedly there is a money dispute between them. If at all any defence available, the petitioner can put forth his defence before the Trial Court. Further, the judgement relied by the petitioner is not applicable to the facts of the present case. However, the personal appearance of the petitioners 2, 3, 4 is ordered to be dispensed



with.

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6. In the result, this petition is dismissed. No Costs. Consequentially, connected miscellaneous petition is closed.

27.02.2024

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T.V.THAMILSELVI, J.
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To

1. The Public Prosecutor, High Court, Madras.
2. The Fast Track Court No.II at Magisterial Level Coimbatore



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