IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.20795 of 2023
and Crl.MP.No.14214 and 14216 of 2023

1.V.G.Hem Advai

2.Thanusha ... Petitioners/Accused (4 & 5)

.vs.

R.J.Parthasarathu
S/o.Jeganathan
Proprietor, M/s.Shree Sakthi steels
S.F.No.58, K.K.Nagar,2nd Street
Police Quarters Road,Ganapathy Post
Coimbatore-641 006. .. Respondent/ Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the private complaint proceeding pending against them in STC No.317 of 2023, on the file of the learned Judicial Magistrate Fast Track Magistrate Level-II, Coimbatore.

For Petitioners : Mr.P.M.Duraiswamy

For Respondent : Mr.D.Arun Kumar

O R D E R

This criminal original petition has been filed seeking to quash the proceedings in STC No.317 of 2023, on the file of the learned Judicial Magistrate, Fast Track Magistrate Level-II, Coimbatore, insofar as the petitioners (A4 and A5) are concerned.

2.Heard Mr.P.M.Duraiswamy, learned counsel for the petitioners and Mr.D.Arun Kumar, learned counsel for the respondent.

3.The respondent/complainant filed a private complaint against the Partnership Firm and four others for offence under Section 138 of the Negotiable Instruments Act, 1881. The case of the respondent is that he had supplied goods under several invoices on credit basis to the partnership firm and towards the same, there was a liability to the tune of Rs.4,77,950/-. After several demands and requests, three cheques were issued in the name of partnership firm and which was signed by A2. When these cheques were deposited, it was dishonored with an endorsement "funds insufficient". Thereafter, the statutory notice was issued and the private complaint came to be filed before the Court below against the partnership and four others. Insofar as the petitioners are concerned, they are described as the factory manager and finance officer.

4.In the complaint, it is stated that the partners and also the petitioners (A4 and A5) are actively involved in the day-to-day affairs of the partnership firm. Therefore, the petitioners have also been roped in in their capacity as the officers of the partnership firm by relying upon Section 141 of the Negotiable Instruments Act, 1881.

5.The learned counsel for the respondent submitted that the required averments have been made in the complaint even as against the petitioners and hence if the petitioners are not incharge and responsible in conducting the day-to-day affairs of the firm, they can only establish the same before the trial Court. In support of his submission, the learned counsel relied upon the judgment of the Apex Court in ***S.P. Mani & Mohan Dairy v. Snehalatha Elangovan*** reported in **2022 SCC on-line SC 1238.**

6.Per contra, the learned counsel for the petitioners submitted that the 2nd petitioner (A5) is a doctor by profession and during the relevant point of time, she was working as an Assistant Medical Officer. The learned counsel further submitted that apart from the general averment made in the complaint, there is no material available to show that the 1st petitioner was working as a factory manager and the 2nd petitioner was working as a finance officer.

7.The judgment of the Apex Court in SP.Mani case referred supra was taken note of in the subsequent judgment in **Ashok Shewakramani and Others .v. State of Andhra Pradesh and Another** reported in **2024 1 MLJ Crl 170.** The relevant portion is extracted hereunder:

> **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 paragraph 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 the accused No.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 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 subsection 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, 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 deeded to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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.]"

8.It is clear from the above that the mere averment that the accused person is in active participation of the day-to-day affairs of the firm, will not suffice and it must also be stated as to how and in what manner they were incharge and responsible for running the firm. This is more so when some of the accused persons are attempted to be roped in based on the fact that they were working in the firm. In those cases, there must be some material to show that those accused persons were in fact working in that capacity in the firm. If this is not insisted, anybody can be roped in a complaint by giving them some position/designation.

9.In the considered view of this Court, the continuation of the proceedings as against the petitioners (A4 and A5) will clearly result in abuse of process of Court which requires the interference of the Court. This is more so since the requirements under Section 141 of the Negotiable Instruments Act, 1881 has not been satisfied and there is no material available to show that A4 was working as a factory manager and A5 was working as a finance officer in the firm.

10.In the result, the proceedings in STC No.317 of 2023, on the file of the learned Judicial Magistrate, Fast Track Magistrate Level-II, Coimbatore, is quashed insofar as the petitioners (A4 and A5) are concerned. The Court below shall proceed further with the case insofar as the other accused persons are concerned. The proceedings in STC No.317 of2023, pending on the file of the learned Judicial Magistrate, Fast Track Magistrate Level-II, Coimbatore, shall be completed within a period of **six months** from the date of receipt of copy of the order.

11.This criminal original petition is accordingly allowed. Consequently, connected miscellaneous petitions are closed.

08.02.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
KP

To

Judicial Magistrate

Fast Track Magistrate Level-II,

Coimbatore.

N. ANAND VENKATESH., J

KP

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