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Crl.O.P.No.23881 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.23881 of 2023

and

Crl.M.P.Nos.16572 & 16573 of 2023

1.Asharam Mundra, Director
M/s.Bombay Rayon Fashions Ltd.,

2.Suresh Shankar Vishwas Rao, Director
M/s.Bombay Rayon Fashions Ltd.,

3.John Mathew, Director
M/s.Bombay Rayon Fashions Ltd.,

4.Prachi Amit Deshpandi, Director
M/s.Bombay Rayon Fashions Ltd.,

All are having registered office at
3rd Floor DLH Mangalmurthi Building
Linking Road, Santacruz (West)
Mumbai City, MH – 400054

... Petitioners

Vs.

M/s.SP Coal Resource Pvt. Ltd.,
Rep. by its Manager N.Jagadesh
Old No.77, New No.111, 3rd Floor
Perambur, Red Hills Road
Vinayagapuram, Chennai 600 099

...Respondent



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Criminal Original Petition under Section 482 of the Criminal Procedure Code to call for the records in STC.No.741 of 2022 on the file of the Judicial Magistrate/Fast Track Court at Poonamallee, quash the proceedings therein.

For Petitioners : Mr.C.S.Dhanasekaran
for Mr.P.K.Narayanan

For Respondent : Mr.P.Jesusmoris

ORDER

This petition has been filed seeking to quash the proceedings in STC No.741 of 2022 on the file of the Judicial Magistrate, Fast Track Court, Poonamallee.

2. The respondent / complainant filed a complaint against the accused persons for offence under Section 138 of the Negotiable Instruments Act. According to the respondent, he had supplied coal to A1 company and towards this liability, five cheques were issued by the accused persons for a sum of Rs.23, 76,125/-. When these cheques were presented for collection, it was dishonored. After the issuance of statutory notice, the complaint was filed against seven accused persons. This quash petition has been filed by



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A2, A5, A6 and A7.

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3. Heard Mr.C.S.Dhanasekaran for Mr.P.K.Narayanan, learned counsel for the petitioners and Mr.P.Jesusmoris, learned counsel for respondents.

4. The learned counsel for the petitioners submitted that the petitioners are not the signatories of the cheques and that they have been added as accused only on the ground that they were Directors during the relevant point of time. While doing so, no averment was made in the complaint as to how and in what manner, the petitioners are managing the affairs of the company and are incharge of the conduct of the day today affairs of the company. The learned counsel in order to substantiate his submission, relied upon the Judgement of the Apex Court in ***[Ashok Shewakramani and others Vs. State of Andhrapradesh and another]*** reported in ***2023 8 SCC 473***.

5. Per contra, the learned counsel for Respondent submitted that



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sufficient averments have been made in the complaint and that by itself is enough to sustain the complaint against the petitioners. If the petitioners want to establish that they are not managing the affairs of the company and in-charge of the conduct of the business of the company and they must only come up with materials which are sterling in quality and incontrovertible. To substantiate his submission, the learned counsel relied upon the judgement of the Apex Court in ***[S.P.Mani and Mohan Dairy Vs. Dr. Snehalatha Elangovan]*** reported in ***2022 SCC online SC 1238***.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. Before going into the grounds raised by either side, it is necessary for this Court to take note of the averments made in the complaint and the relevant averments are extracted hereunder:-

4. *The complainant states that the 1st accused company is one among the purchasers of the complainant company and the 2nd to 7th accused are the Directors of the Company. The*



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complainant stats that the accused's has purchased steam coal from the complainant during the year of 2020.

12. The complainant states that the 2nd to 7th accused's are the directors of the 1st Accused company in such nature the 2nd to 7th Accused's are the one who represents for the 1st accused company and have issued the said cheques promising payment towards the purchased coal as such they have committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

8. In the instant case, there is no dispute with regard to the fact that the cheques were signed by either A3 or by A4 on behalf of A1 company. The other accused persons have been added only in their capacity as the Directors of the Company.

9. It is true that the Apex Court in ***SP Mani case*** referred supra has held that ordinarily the basic averment would be sufficient to make the Directors undergo the trial, unless they are able to furnish some sterling



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incontrovertible material.

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10. The relevant averments that have been made in the complaint that has been extracted supra shows that even the basic averments against the petitioners is absent,.

11. Apart from the above, the judgement in Mani case was once again considered by the Apex Court in Ashok Savvega Mani case referred supra. The Apex Court in the later judgement has once again reiterated that mere averments are not sufficient and that it must be stated as to how and in what manner the Directors are involved in managing the day-to-day affairs of the company and in-charge of the conduct of the business of the company. This is more so where the Directors are neither the Signatories to the cheques nor are they whole time directors. The Apex Court also took into consideration the earlier judgement in ***[Ashoke Mal Bafna Vs. Upper India Steel Manufacturing and Engineering Company Limited]*** reported in ***2018 14 SCC 202.***



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12. In the light of the above discussion, this Court holds that the continuation of the criminal proceedings as against the petitioners will result in abuse of process of Court which requires the interference of this Court. Accordingly, the proceedings in STC.No.741 of 2022 on the file of the Judicial Magistrate/Fast Track Court at Poonamallee, is hereby quashed insofar as the petitioners are concerned.

13. In the result, this Criminal Original Petition is allowed. There shall be a direction to the Court below to proceed further with the complaint insofar as the other accused persons are concerned and the proceedings shall be completed within a period of six months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed.

30.01.2024

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Index : Yes/No

Speaking order: Yes/No

Neutral citation: Yes/No



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N.ANAND VENKATESH,J

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To

- 1.The Judicial Magistrate/Fast Track Court
Poonamallee
- 2.The Public Prosecutor
Madras High Court

Crl.O.P.No.23881 of 2023
and
Crl.M.P.Nos.16572 & 16573 of 2023

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