IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.1552 of 2024
and Crl.M.P Nos.1098,1100 of 2024

Mohammed Abdul Rahman Sheriff ..Petitioner

vs.

M/s.Araham Ventures Rep. By its Power Agent Vinoth Kumar
No.869, Poonamallee High Road,
P.A.Towers, 1st Floor, Office No.B6,
Kilpauk, Chennai 600 010 ..Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records on the file of the learned Metropolitan Magistrate FTC 1, Allikulam, chennai in STC No.9988 of 2023 and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.S.Selva Thirumurugan

For Respondent : Mr.R.Ganesh Kumar

ORDER

This Criminal Original petition has been filed seeking to quash the proceedings in STC.9988 of 2023, pending on the file of the learned

Metropolitan Magistrate, FTC 1, Allikulam, Chennai, insofar as the petitioner (A4) is concerned.

2. The respondent / complainant has filed a complaint for offence under section 138 of the Negotiable Instruments Act against the company and its Directors on the ground that the accused persons had approached the respondent / complainant seeking for loan to meet their business needs and believing their representation, loan was given to the company. Only a part payment was made and after several requests and demands, the accused persons issued cheques towards repayment of the loan. When these cheques were deposited, it was returned with an endorsement "account closed" Thereafter, the statutory notice was issued and since the cheque amount was not paid, the complaint came to be filed before the Court below and the same was taken cognizance and summons was issued. The petitioner who has been arrayed as A4 has filed this petition seeking to quash the proceedings.

3. Heard Mr.S.Selva Thirumurugan, learned counsel for the petitioner and Mr.R.Ganesh Kumar, learned counsel for respondent.

4. The main ground that was urged by the learned counsel for the

petitioner is that the complaint is completely silent as to how and in what manner, the petitioner is in-charge and responsible for running the day today affairs of the company. The learned counsel further submitted that at the time when the alleged cheques were issued, the petitioner was not even present in the country and he had left the country on 18.03.2023 and he had returned back only on 10.05.2023.

5. Per contra, the learned counsel for respondent submitted that presence or otherwise of the petitioner in the country is a matter of fact and the same cannot be gone into by this Court in the quash petition. The learned counsel further submitted that necessary allegations have been made in the complaint and the fact as to whether the petitioner was in-charge and responsible for the day today affairs of the company, has to be established only in the course of trial and it cannot be decided in the quash petition. Hence, the learned counsel sought for the dismissal of this petition.

6. It will be more appropriate to extract the relevant portions from the complaint pertaining to the petitioner hereunder :-

> *9. The complainant submits that the 1st accused is a company represented by the 2nd accused, the 2nd to 4th accused are directors of the 1st accused company and involved in*

daytoday affairs of the firm and the 2nd and 3rd accused signed the cheque.

10. The complainant submits that they are doing business in the above mentioned address. In this connection, 2nd and 3rd accused on behalf of 1st company had approached the complainant for loan to meet their business needs. On believing the representation to be true and genuine gave loan of Rs.41,00,000/- to the accused as follows :-

(1) Rs.15,10,000/- on 07.09.2019 by way of RTGS, through M/s.Federal Bank Limited No.47, Gangadeeswarar Koil street, Purasawalkam, Chennai – 84
(2) Rs.16,00,000/- on 07.09.2019 by way of RTGS, through M/s.Federal Bank Limited No.47, Gangadeeswarar Koil street, Purasawalkam, Chennai – 84

7. The averments made in the complaint as against A4 has been extracted supra. It is an admitted case that A2 and A3 are the signatories to the cheque and this cheque was issued on behalf of A1 company. Insofar as the petitioner (A4) is concerned, he has been added as an accused only in his capacity as a Director. Therefore, it must be seen as to whether the averments made in the complaint satisfies the requirements under Section 141 of the Negotiable Instruments Act. On carefully going through the complaint, it is seen that A2 and A3 are the signatories to the cheque and it is A2 and A3, who had actually approached the respondent /complainant seeking for loan to meet the business needs. Insofar as the petitioner (A4) is concerned, the only allegation made against him is that the is in-charge of the administration of the

company.

8. The Apex Court had an occasion to deal with a similar issue in ***[Ashok Shewakramani and Others .v. State of Andhra Pradesh and Another]*** reported in ***2024 1 MLJ Crl 170***. In this judgement, the Apex Court has considered the earlier judgements and particularly, the earlier Judement in ***SP mani case*** reported in 2022 SCC online SC 1238 and 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.]"

9. It is clear from the above that while a Director of a company is being added as an accused, the complainant has to necessarily state as to how and in what manner the Director was in-charge and responsible for the day today affairs of the company. Merely extracting the words under Section 141 of the Negotiable Instruments Act will not suffice.

10. The reading of the entire complaint filed by respondent shows that it was A2 and A3, who had approached the complainant for loan and they are the ones who had signed the cheque on behalf of A1 company. When that is the case, insofar as the petitioner (A4) is concerned, the complainant should have stated as to how and in what manner this petitioner is in-charge and responsible for the day-to-day affairs. By merely stating that the petitioner is in-charge of the administration of the company, the requirement is not satisfied.

11. In the light of the above discussion, the continuation of the criminal proceedings as against the petitioner (A4) will result in abuse of process of law, which requires the interference of this Court, Accordingly, the proceedings in STC No.9988 of 2023 on the file of Metropolitan Magistrate FTC 1, Allikulam, Chennai, is quashed insofar as the petitioner (A4) is concerned. The Court below shall proceed further with the complaint as against the other accused persons and the proceedings shall be completed within a period of six months from the date of receipt of a copy of this order. In the result, this Criminal Original petition is allowed. Consequently, the connected miscellaneous petitions are closed.

13.03.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
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To

1. Metropolitan Magistrate FTC 1, Allikulam, chennai

2. The Public Prosecutor,
High Court of Madras,
Madras.

N. ANAND VENKATESH,. J.

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