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Crl.R.C.(MD).No.450 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	20.12.2023
Pronounced On	:	12.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD)No.450 of 2023

and

Crl.MP(MD)No.6605 of 2023

Duraipandian

... Petitioner/Respondent/
Accused

Vs.

Employees Provident Fund Organization,
Sub Regional Officer,
N.G.O 'B' Colony,
Tirunelveli-Represented through its
Assistant PF Commissioner Shri P.Basheer.

..... Respondent/Petitioner/
Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records relating to the order passed by the learned Judicial Magistrate, Valliyoor in Cr.M.P.No.251 of 2023 in C.C.No.3 of 2015 dated 09.03.2023 set aside the same and allow this revision petition.

For Petitioner : Mr.C.Susikumar

For Respondent : Mr.Mahaboob Athiff



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ORDER

This revision has been filed to set aside the order passed by the learned Judicial Magistrate, Valliyoor in Cr.M.P.No.251 of 2023 in C.C.No.3 of 2015 dated 09.03.2023.

2.The accused in C.C.No.3 of 2015 on the file of the learned Judicial Magistrate, Valliyoor, filed this petition challenging the impugned order passed in Cr.M.P.No.251 of 2023 dated 09.03.2023 wherein, the learned trial Judge has allowed the application filed by the respondent under Order 1 Rule 10(2) of C.P.C., to implead the firm namely, 'Sweety Garments' as a party. The petitioner and the other accused are the partners in the firm of 'Sweety Garments'. They issued a cheque to discharge their liability under the Employees Provident Fund Act. The said cheque was 'dishonoured' and the same was issued as contribution of 20 labours. Hence, the respondent initiated a proceedings before the learned Judicial Magistrate, Valliyoor, under Section 138 of Negotiable Instruments Act, against the petitioner and other accused. Inadvertently, the said partnership firm was not impleaded as a party. So, the respondent filed a petition in Cr.M.P.No. 251 of 2023 under Order 1 Rule 10(2) of C.P.C., to implead the partnership firm as a party. The said petition was contested by the petitioner by filing counter



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stating that after the completion of trial, the petition filed by the respondent was not maintainable and the same was also barred by limitation and sought for dismissal of the petition. The learned trial Judge, after considering the fact that the petitioner and other accused issued a cheque on behalf of the partnership firm namely, the 'Sweety Garments' and also considered the welfare of 20 labourers, allowed the application by passing the impugned order dated 09.03.2023. Challenging the same, the petitioner filed this revision.

3. The learned counsel for the petitioner submitted that as per latest judgment rendered by the Hon'ble Supreme Court in ***Pawan Kumar Goel Vs. State of U.P and Another*** reported in ***2022 LiveLaw SC 971***, the order of the learned trial Judge is not sustainable.

4. The learned counsel for the respondent submitted that the above judgment of the Hon'ble Supreme Court relied by the petitioner reported in 2022 Live Law SC 971, is not applicable to the present facts of the case. In the said case, company was proposed to be impleaded. Company is the juristic person and separate legal entity and directors are liable on behalf of the company, here, the partnership firm. Partnership firm is not a legal entity and each partner is liable to discharge the debt either collectively or individually. In this case, to



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discharge the statutory liability of payment of the Employees Provident Fund for number of workers, instead of giving a Demand Draft, the petitioner gave the cheque. As per Section 24 of the Partnership Act, the notice sent to the partners is deemed to be the service of notice to the partnership firm. Therefore, proper notice was sent within the time and also complaint was filed arraying the partners. By way of abundant caution now the partnership was proposed to be impleaded. The same was allowed in the interest of justice. Hence, the principle applicable to the company is not applicable to the partnership firm. Therefore, he seeks for dismissal of the revision.

5. This Court considered the rival submission of both the parties and the precedents relied upon by them and also perused the records.

6. The Employees Provident Fund organization (herein after called as EPF), initiated the proceedings against the petitioner and other partners of “Sweety garments” under Section 138 of the Negotiable Instruments Act with the following allegation:

(i). Sweety Annal Mary, Durai rajan are the partners of the Sweety Garments. They had failed to remit the provident fund and allied dues of Rs. 3,30,824/- towards the contribution of the twenty employees. On demand, they



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issued the Tamil Nadu Mercantile Bank cheque dated 15.07.2010 drawn in

favour of the EPF organization for the said amount and the same was returned with endorsement “Exceeds arrangements”. Therefore, statutory notice under the Negotiable Instruments Act was issued on 04.10.2010. The petitioner received the same on 05.10.2010. But they failed to remit the amount. Therefore, a complaint was filed against Sweety Annal Mary and Durairajan and the same was taken on file in C.C.No.03 of 2015 and summons was issued to them. The petitioner appeared and contended that without impleading the partnership firm, complaint under Section 138 of Negotiable Instruments Act is not maintainable. Partnership firm is entirely different from the company. Partnership firm is not a legal entity and each partner is liable to pay the amount individually or collectively. In order to avoid the technicality, the EPF organization filed the impleading petition under Order I Rule 10(2) of C.P.C., to implead the partnership as a accused in the above C.C.No.3 of 2015. The same was allowed by the learned trial Judge considering the involvement of dues of the 20 employees.

7. The learned counsel for the petitioner relied the judgement of the Hon'ble Supreme Court reported in **2022 Live Law SC 971** to substantiate his contention that the proceedings against the company by only impleading the



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director of the company is not maintainable. In this case, the EPF organization has not initiated the proceedings against the company and they filed petition against the partners of the partnership firm. It is well settled, the company is a separate legal entity and on behalf of the company only the directors are liable. But, in the case of the partnership firm the position is vice versa ie., the partners are liable to pay the amount on behalf of the partnership firm and partnership firm is not the legal entity. Therefore, considering the interest of 20 employees, the EPF organization filed the complaint to recover the statutory dues under EPF Act, and the learned trial Judge correctly allowed the application. In the said factual situation the precedent relied by the learned counsel for the petitioner is not applicable to the present case.

8. In the case of partnership firm, there is no legal requirement to issue notice to the partnership firm separately as required in the case of the company for the reason that under Section 24 of the Partnership Act, it is a deemed service of notice to the partnership firm if notice is served upon the partners of the firm. Hence, in this case proper notice was served to the partners and also cognizance was taken within time. Therefore, in all aspects, this Court is not inclined to interfere with the order of the learned trial Judge. It is open to the petitioner to agitate the legal issue of applicability of the principle relating to the



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company as laid down in 2022 Live Law SC 971 during the course of trial.

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9. With this observation, the Criminal Revision Case stands dismissed.

Consequently, connected criminal miscellaneous petition is closed.

12.03.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

1. The Judicial Magistrate,
Valliyoor.

2. Shri.P.Basheer,
Assistant PF Commissioner,
Employees Provident Fund Organization,
Sub Regional Officer,
N.G.O 'B' Colony,
Tirunelveli.

3. The Section Officer,
Criminal Section (Records)
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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