(2009) 08 MAD CK 0064

In the Madras High Court

Case No : Criminal O.P. (MD) No. 41706 of 2003

Abdul Salam and Shakeela Begam APPELLANT

Vs

Taj Trading Corporation RESPONDENT

Date of Decision : 20-08-2009

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Evidence Act, 1872 — Section 74, 79
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 142

Citation : (2009) 08 MAD CK 0064

Hon'ble Judges : G.M. Akbar Ali, J

Bench : Single Bench

Advocate : M. Siddarthan, for the Appellant; S. Deenadhayalan, for the Respondent

Final Decision : Dismissed

Judgement

G.M. Akbar Ali, J.—The petition filed u/s 482 Cr.P.C. to call for the records relating to C.C. No. 463 of 2003 on the file of the learned

Judicial Magistrate No. II, Dindigul and quash the same.

2. The facts of the case is as follows:

The petitioners are husband and wife. The respondent alleged that M/s. Taj Trading Corporation, Rep. by its Managing Partner K.S. Mohammed

Ameerudeen @ Babu, Dindigul, were dealing with the Gnerkins and in that business transaction the said Taj Trading Corporation was liable to pay

a sum of Rs. 18,84,645/- to the complainant firm during the period 29.03.2001 to 31.03.2003. on 28.07.2003, to clear the debt, the Managing

Director and the Executive Director of the said company issued a cheque dated 30.07.2003 for the said amount and the same was returned on

08.08.2003 as ï¿½Funds insufficientï¿½ and therefore, a complaint has been filed under Sections 138, 141 and 142 of the Negotiable Instruments

Act, 1881 before the learned Judicial Magistrate No. I, Dindigul. According to the complainant, the first accused is a company and accused Nos.

2 to 5 are the Directors of the company. The said complaint was taken on file by the learned Judicial Magistrate No. I, Dindigul in C.C. No. 463

of 2003.

3. The case of the petitioners, who are the 3rd and 4th accused is that they are not the Directors of the first accused company at the time of

issuance of the cheques. It is further alleged that the 2nd petitioner resigned from the Board of Directors on 06.10.2002 and public notice was also

effected and Form No. 32 has also been filed before the Registrar of companies. The first petitioner is neither a Director nor in-charge of the

business transaction of the first accused company and therefore, the petitioners are not Directors at the time of the alleged transactions and they

cannot be prosecuted by the complainant company and such transaction is nothing but a clear abuse of process of law and therefore, the

proceedings has to be quashed.

4. Heard the learned Counsel for the petitioners and the learned Counsel for the respondent.

5. The learned Counsel for the petitioners would submit that by a resolution dated 29.04.2002 one Mr. R.S. Venkataraman, the Managing

Director of Kempscity Agro Exports Pvt. Ltd., was authorized to sign all cheques individually and the same has been intimated to the Bank. The

learned Counsel would further pointed out that the 2nd petitioner had resigned from the Board of Directors on 06.10.2002 and the same has also

been informed to the Registrar of Companies under Form No. 32.

6. The learned Counsel for the petitioners would rely on the decision of this Court reported in 2006 (2) MLJ Crime 304 Lachhman P. Udhani and

Ors. v. Redington (India) Ltd., Chennai) wherein this Court has held as follows:

H.N.:- Criminal Procedure Code (2 of 1974), Section 482, Negotiable Instruments Act (26 of 1881), Sections 138 and 141 ï¿½ Quashing of

criminal proceedings ï¿½ Petitioners ï¿½ directors resigned from the company long prior to issuance of cheques ï¿½ Production of Form 32 filed

with Registrar of Companies to establish the resignation ï¿½ Certified copy of

Form-32 is a public document as per Section 74 of Evidence Act

ï¿½ Court shall presume as to the genuineness of such certified copies as per Section 79 of the Act when no counter credential is projected by the

complainant ï¿½ Criminal liability cannot be fastened against them ï¿½ Court has to necessarily accept the same and relieve such a director from

the ordeal of trial ï¿½ Quash.

7. The learned Counsel relied on another decision of this Court reported in 2007 (1) TNLR 264 (Mad) Sri Valsa Agency and Ors. v. K.

Balakrishnan wherein this Court has held as follows:

H.N.:-(B) Negotiable Instruments Act, 1881 ï¿½ Section 138 ï¿½ Dishonour of cheque ï¿½ Proceedings under ï¿½ Person was not a partner on

the date of the issuance of cheque ï¿½ Resigned on 21.05.2005 whereas cheque was issued on 17.08.2005 ï¿½ No partnership deed on record

to show that person was also a partner of the firm on the date of issuance of the cheque ï¿½ No offence made out ï¿½ Proceedings quashed.

8.The learned Counsel relied on a decision of this Court reported in 2007 (2) TNLR 363 (Mad) M.M. Sabharwal etc v. Mahalakshmi Real

Estates and investments (P) Ltd., Rep. by S.G. Srinivasan wherein this Court has held as follows:

H.N.:-Cognizance taken ï¿½ Sustainability of ï¿½ cheques in question issued during 2004 ï¿½ Accused persons submitted that they have resigned

from the accused company on 01.10.1999 and 15.10.1999 ï¿½ No more were Directors of the Company during the course of issuance of the

cheques ï¿½ Statutory notice replied suitably annexing Form 32 submitted before the Registrar of Companies ï¿½ Non-consideration of ï¿½

Averments contained in complaint are omnibus allegation ï¿½ No specific allegation against accused persons ï¿½ Complaint against accused

persons is an abuse of process of law ï¿½ Quashed ï¿½ Magistrate directed to proceed against the remaining accused in accordance with law.

9. The learned Counsel for the petitioners relied on a decision of the Supreme Court reported in 2007 (2) CTC 86 S.M.S. Pharmaceuticals Ltd. v.

Neeta Bhalla and Anr. wherein the Supreme Court has held as follows:

H.N.:-Vicarious liability of Directors ï¿½ Section 141 does not state that Director of Company shall automatically be vicariously liable for

commission of offence on behalf of Company ï¿½ Sufficient averments should be made in Complaint to show that person who is sought to be

proceeded against on premise of his being vicariously liable for commission of offence by Company must be in charge and shall also be responsible

to Company for conduct of business ï¿½ Expression ï¿½was incharge of any was responsible for conduct of business of Companyï¿½ must be

read conjointly and not disjunctively ï¿½ Averment that accused was party to resolution authorizing taking of money on inter-corporate deposit

would not be sufficient to bring person within ambit of ï¿½incharge of and was responsible for conduct of business of companyï¿½.

10. The learned Counsel for the petitioners further submitted that the 2nd petitioner had already resigned at the relevant time of issuance of cheque

and the petitioners were not the Board of Directors and therefore, they are not responsible for the affairs of the company and they are not

vicariously liable.

11. The learned Counsel for the respondent would submit that the petitioners had created a document as if to show that the 2nd petitioner had

resigned from the affairs of the company and the 1st petitioner was not actively involved in the affairs of the company. The learned Counsel also

pointed out that these are the matters for evidence before the trial court and therefore, the petitioners liability would be established only at the time

of trial by the complainant and the petitioners can adduce rebuttal evidence in the trial.

12. The learned Counsel for the respondent would rely on a decision of this Court reported in Mrs. K. Umadevi Vs. V. Manikandan, Proprietor,

Manisha Traders, wherein this Court has held as follows:

H.N.:-Xerox copies of Form 32 submitted to Registrar of Companies was filed to show his resignation ï¿½ High Court dismissed quashing petition

holding that when complainant has specifically averred in complaint that particular accused was one of the directors responsible for conduct of

business of accused company and when director disputes such position, such disputed fact will have to be adjudicated only during course of trial

ï¿½ Whether accused was reinducted as Director has to be decided in trial.

13. The learned Counsel also relied on a decision of this Court reported in 2004 MLJ (Crl.) 315 Rajkumar Menon and Anr. v. Upasana Finance

Limited, Chennai wherein this Court has held as follows:

The plea of the petitioners that they ceased to be directors of the company on whose behalf the cheque was signed, on the date of the presentation

of the cheque, on the basis of an unmarked document (certified copy of Form No. 32) cannot be accepted and it was for the petitioners to prove

by marking the document in the trial to establish that they had ceased to be directors of the company on the date of the presentation of the cheque

and they were not in charge of the day to day affairs of the company.

14. The learned Counsel also relied on a decision of the Supreme Court reported in 2007 (1) MLJ (Crl) 1231 N. Rangachari v. Bharat Sanchar

Nigam Ltd., wherein the Supreme Court has held as follows:

Allegation, clearly, made in complaint that accused No. 2 and 3, in charge of and responsible to company for conduct of its business ï¿½ As such,

complaint disclosed adequate material for proceeding against appellant in terms of Section 138 read with Section 141 of the Negotiable Instrument

Act ï¿½ High Court, justified in refusing to quash complaint and leaving it to appellant to establish his defence at trial.

15. The learned Counsel also relied on a decision of the Supreme Court reported in 2008 (3) MLJ (Crl) 1084 (SC) Malwa Cotton and Spinning

Mills Ltd. v. Virsa Singh Sidhu and Ors. wherein the Supreme Court has held as follows:

Proceedings initiated against respondent No. 1/accused Director of Company ï¿½ Impugned order of High Court quashing said proceedings ï¿½

High Court quashed proceedings primarily on ground that respondent No. 1 had resigned from Directorship before cheques were issued ï¿½

Whether in fact respondent No. 1''s claim to have registered was factually correct would have been established in trial ï¿½ High Court could not

have passed impugned judgment while dealing with petition u/s 482 of Code ï¿½ High Court not justified in quashing proceedings so far as

respondent No. 1 is concerned ï¿½ Appeal allowed.

16. Admittedly, the petitioners were the Directors in the first accused company. The two cheques issued by the company had returned on

08.08.2003 as ï¿½Funds insufficientï¿½ and based on which a case has been registered under Sections 138, 141 and 142 of the Negotiable

Instruments Act, 1881 and the same was taken on file in C.C. No. 463 of 2003 by the learned Judicial Magistrate No. I, Dindigul.

17. The specific case of the 2nd petitioner is that she had resigned from the affairs of the accused company and for that she relied on an undated

letter issued by one Mr.R.S.Venkatraman,the Managing Director of the accused company and also on a copy of Form 32. It is also seen in the

xerox copy of Form No. 32 the name of the 2nd petitioner is mentioned as ï¿½Sarika Salamï¿½ and in the copy of the letter from R.S.

Venkatraman, Managing Director, Kempscity Agro Exports Pvt. Ltd., Dharmapurai, it is mentioned as ï¿½Shakila Salamï¿½. The factum of such

resignation is to be proved.

18. The first petition relies on a resolution of the Board of Directors of the accused Company, wherein, it was mentioned that from 01.05.2002

Mr. R.S. Venkatraman is the authorized person to sign in the cheque on behalf of the company. The first petitioner continues to be a Director.

19. As rightly pointed out the fact that the petitioner had resigned from the affairs of the company, has to be established only in the trial and mere

production of the Xerox copy of the documents would not prove that the 2nd petitioner has resigned and the first petitioner has not actively

participated in the affairs of the company.

20. In view of the above, there is no enough materials to prove the submissions of the petitioners that they have to be discharged from the charges

and in the absence of such material, this Court is not justified in quashing the proceedings in C.C. No. 463 of 2003 on the file of the learned

Judicial Magistrate No. II, Dindigul as the allegations has to be proved only during the course of trial.

In the result, the petition is dismissed.

