
(2009) 08 MAD CK 0398

In the Madras High Court

Case No : Criminal O.P. No. 33090 of 2005 and M.P. No. 9357 of 2005

C. Arulprakash, R. Anandhan and S. Kalimuthu

APPELLANT

Vs

S.P. Shanmugham

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 142

Citation : (2009) 08 MAD CK 0398

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; D. Selvaraj, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above Criminal Original Petition has been filed by the petitioners/accused 3 to 5 to call for the records pertaining to the Criminal Proceedings in C.C. No. 58 of 2003 on the file of the Judicial Magistrate No. I, Erode and quash the same.

2. The respondent/complainant has filed a case in C.C. No. 58 of 2003 against 5 accused persons on an alleged offence under Sections 138, 141 and 142 of the Negotiable Instrument Act. The ingredients of the complaint revealed that the Accused No. 1 is a partnership firm and Accused Nos. 2 to 5 are the partners of the same firm and looking after the day to day business of the partnership firm i.e., Accused No. 1. The 2nd accused had approached the complainant on 03.09.2002 and borrowed a sum of Rs. 1,50,000/- for the business needs of the partnership firm and for the benefits of the other Accused 2 to 5 herein, who are partners of the said firm. On behalf of the 1st accused firm, and on behalf of all the other accused, a post dated cheque bearing No. 722420 dated 13.09.2002, drawn on Bank of Baroda, Erode Branch was issued to and in favour complainant. The complainant presented the same on 16.09.2002 through his bankers namely the Karur Vysya Bank Limited, Mettukadai Branch. The above said cheque was returned with with an endorsement, "Account Closed". The same was informed to

the complainant on 18.09.2002. Thereafter, the complainant issued legal notice on 27.09.2002. The said notices were served on the Accused Nos. 3 to 5. the other two notices were returned from Accused Nos. 1 & 2. Even after this, no payment was received against the said cheque. As such the accused have an intention to cheat and defraud the complainant and committed an offence u/s 138 read with 141, 142 of Negotiable Instrument Act. In support of his complaint, the complainant has filed 6 documents and mentioned three witnesses.

3. Now, the petitioners/accused 3 to 5 are challenging the complaint in C.C. No. 58 of 2003 on the following grounds.

The petitioners submit that the liability has to be fastened on those, at the time of commission of offence, were in-charge of and were responsible to the firm for the conduct of business of the firm. The petitioners are sleeping partners who are not required to take any part in the business of the firm. They may not know anything about the business of the firm. The petitioners submit that every person connected with the company shall not fall within the ambit of the provision. It is only those persons, who are in-charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal offence. Further, the petitioner has alleged that the liability arises from being in-charge of and responsible for the conduct of business of the firm at the relevant time, when the offence was committed and not on the basis of merely holding a designation or office in a firm. The petitioners further submit that the conclusion is inevitable that the liability arises on account of conduct, act or omission on the part of a person and not merely on account of holding an offence or a position in a company. Therefore, in order to bring a case within Section 141 of the Act, the complaint must disclose the necessary facts which makes a person liable. The complaint do not disclose the involvement of the petitioners in the offence and hence they need not be forced to face the trial.

4. The above contentions raised by the complainant as well as the contentions of the petitioners and the arguments advanced by the learned Counsel for the petitioners and the Learned Counsel for the respondent has been gone into by this Court. The petitioners counsel has given two citations in (1) 2007 (4) CTC 764, Supreme Court of India, K. Srikanth Singh, Appellant v. North East Securities Limited and Anr. Respondents and (2) 2007 (2) CTC 86, Supreme Court, S.M.S. Pharmaceuticals Limited, Appellant v. Weeta Bhalla and Anr. in support of his case and the Learned Counsel for the respondent submitted a Citation in N. Rangachari Vs. Bharat Sanchar Nigam Ltd., , Respondent to support his case.

5. The Court is of the view that the petitioners/Accused 3 to 5 admitted that they are sleeping partners. But they are well aware that the loan has been availed by the 1st accused firm for the welfare of all the partners, including sleeping partners, i.e. the petitioners herein. As such, they are necessary parties in this case. Further, the Citations submitted by the petitioners are not applicable in the

instant case.

6. Accordingly, the Criminal Original Petition No. 33090 of 2005 has got to be dismissed. Therefore, it is dismissed. Consequently, the connected Miscellaneous Petition is closed. The case has been filed in the year 2003. Hence, the Court directs the Learned Magistrate to dispose the case within six months from the date of receipt of this Order.