

Crl.O.P.No.SR52639 of 2023
and
Crl.M.P.No.17004 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :30/10/2023

Pronounced on :01/11/2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.SR52639 of 2023

and

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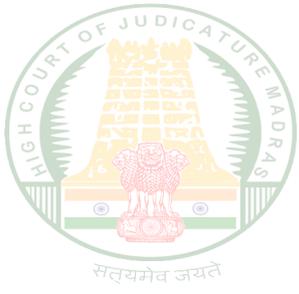
Mrs.K.Revathy,
Wife of Kumara Krishnan
Director, aged 59,
Gevika Agro Food Private Limited,
No.2, IVth Cross, Jawahar Nagar,
Reddiyarpalayam, Pondicherry-605 010.

..Petitioner/3rd Accused

/versus/

Equitas Small Finance Bank Ltd.,
(formerly known as Equitas Finance Ltd.)
Represented by power agent M.Gokulakrishnan,
Manager-Legal
Spencer Plaza, IV Floor, Phase-II,
No.769 Mount Road, Anna Salai,
Chennai 600 002.

.. Respondent/Complainant



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Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records pertaining to the complaint pending in C.C.No.10799 of 2018 on the file of the Metropolitan Magistrate Cum Fast Track Judge-III, Madras and quash the same in so far as the petitioner is concerned as arbitrary, unsustainable in law and on facts.

For Petitioner :Mr.AR.M.Arunachalam

ORDER

The petitioner herein is arrayed as the third accused in C.C.No.10799 of 2018 (on the file of Metropolitan Magistrate cum Fast Track Court No.III, Saidapet, Chennai), in a private complaint for offence under Section 138 of Negotiable Instruments Act, 1881.

2. The gist of the complaint runs as under:-

The petitioner is one of the Director of Gevika Agro Food (P) Ltd. Her company borrowed business loan of Rs.25 lakhs from the complainant Bank and agreed to repay the loan in equated monthly instalment. The Managing Director of the Company Mr.Kalyankumar and this petitioner as a Director



given personal guarantee for the repayment. To discharge the loan the company issued cheque dated 23/05/2018 for Rs.25,68,310/- signed by the Managing Director of the company Mr.Kalyankumar. The cheque was presented for collection on 23/05/2018, but returned with endorsement “ Payment Stopped by drawer”. The statutory notice dated 06/06/2018 was sent to; (i) M/s Gevika Agro Food (P) Ltd; (ii) its managing director Mr. Kalayakumar /the signatory of the cheque; and (iii) the Director, Mrs. Ravathy (the petitioner herein). The notice was received by them on 09/06/2018. Having failed and neglected to pay the cheque amount, the complaint was lodged.

3. The petitioner in her quash petition had contended that she is not actively involved in the affairs of the company and hence, the case as lodged against her is not maintainable. The cheque was not issued with her knowledge. In the complaint, there is no specific averment about the knowledge and consent of the petitioner for issuing the cheque. Only a sweeping statement been made to include all the Directors of the company liable and for action.



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4. In support of the petition, the learned counsel for the petitioner rely upon the judgments of the Hon'ble Supreme Court, to buttress his argument that in the absence of specific averment that the petitioner as a Director was in-charge of the company and responsible for the conduct of the business of the company as found in Section 141(1) of the Negotiable Instruments Act, 1881, the complaint is liable to be quashed as against this petitioner.

5. Heard the learned counsel appearing for the petitioner. Complaint and the judgments cited perused.

6. In the complaint at paragraph (3), how the liability occurred is narrated. The complainant is a banking institution. The first accused is the Company which has availed loan from the complainant Bank. The second accused is the Managing Director and the third accused is the Director. While availing loan, both the second and third accused have executed guarantee letter for prompt repayment of the loan. To discharge the loan the subject cheque signed by the Second accused was issued. The accused had instructed their bank to stop payment. In the complaint at paragraph (6) it is averred that the 2nd



and 3rd accused being the Directors of the first accused company are responsible to the conduct of the business and as under Section 141 of Negotiable Instruments Act, 1881 deemed to be guilty of the offence.

7. In *Ashoke Mal Bafna –vs- Upper India Steel Manufacturing and Engineering Company Limited* reported in *[(2018) 14 SCC 202]*, the Hon'ble Supreme Court had held as below:-

9.To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business at the time of commission of an offence will be liable for criminal action. (See Pooja Ravinder Devidasani v. State of Maharashtra [Pooja Ravinder Devidasani v. State of Maharashtra])

10.In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of



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the Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company.

11.Turning to the case on hand, admittedly the cheques dated 28-12-2004 were issued while the appellant was Director of the Company with validity for a period of six months but during that period they were not presented for realisation at the bank. The appellant has resigned as Director w.e.f. 2-1-2006 and the fact of his resignation has been furnished by Form 32 to the Registrar of Companies on 24-3-2006 in conformity with the rules. Thereafter, the appellant had played no role in the activities of the defaulter Company. This fact remains substantiated with the statement filed by the defaulter Company on 20-2-2006 with the Registrar of Companies that in an advertisement of the Company seeking deposits (Annexure P-3), only the names of three Directors of the Company were shown as involved in the working of the Company and the name of the appellant was not therein. Indisputably, therefore, the cheques bounced on 24-8-2006 due to insufficient funds were neither issued by the appellant nor the appellant was involved in the day-to-day affairs of the Company.”



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“17.The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused, was in charge of the business of the company or responsible for the conduct of the company's business. Every Director need not be and is not in charge of the business of the company. If that is the position with regard to a Director, it is needless to emphasise that in the case of non-Director officers, it is all the more necessary to state what were his duties and responsibilities in the conduct of business of the company and how and in what manner he is responsible or



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liable.

20. The legal position which emerges from a series of judgments is clear and consistent that it is imperative to specifically aver in the complaint that the accused was in charge of and was responsible for the conduct of the business of the company. Unless clear averments are specifically incorporated in the complaint, the respondent cannot be compelled to face the rigmarole of a criminal trial.”

9. In ***Ashok Shewarkramani and others -vs- State of Andhra Pradesh and another***, reported in ***[(2023)8 SCC 473]***, the Hon'ble Apex Court while quashing the complaint under Section 138 of Negotiable Instruments Act, 1881 against the Directors, who were not whole time Directors and not signatories to the cheque had held that,

“9. Sub-section (1) of Section 141 of the NI Act required the complainant to aver that the present appellants at the time of the commission of the offence were in charge of, and were responsible to the Company for the conduct of the business of the Company. In the present case, all that the second respondent has alleged is that the appellants were liable for transactions of the Company and that they were fully aware of the issuance of the cheques and dishonour of the cheques.



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10. Therefore, even if we decide to take a broad and liberal view of the pleadings in the complaint, we are unable to draw a conclusion that compliance with the requirements of sub-section (1) of Section 141 of the NI Act was made by the second respondent. The most important averment which is required by sub-section (1) of Section 141 of the NI Act is that the Directors were in charge of, and were responsible for the conduct of the Company. The appellants are neither the signatories to the cheques nor are whole-time Directors. The decision in S.P. Mani & Mohan Dairy v. Snehalatha Elangovan will have no application as in the present case, the statutory notice was admittedly not served to the accused. Obviously, the High Court has not adverted to aforesaid two glaring deficiencies in the complaint.”

10. The dictum laid in the above cases which are cited by the learned counsel for the petitioner, on applying to the facts of the instant case, this Court finds that unlike in the cases cited, in the case in hand, the complaint clearly states that the money was borrowed for the business of the first accused company and this petitioner as one of the director had stood guarantee for repayment of loan. As directors of the company she is responsible for the conduct of the business of the company.



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11. It is not the case of the petitioner that she was not a whole time director or ex officio Director of the company. Her claim is that she is not involved in the day to day affairs of the company and in the complaint there is no specific averment that she is involved in the day to day affairs of the company.

12. Mere extracting the expression used in Section will not satisfy the requirement to hold a director vicariously liable for the offence under Section 138 of Negotiable Instruments Act, 1881. The averment of the complaint must satisfy the test, whether there are averments to *prima facie* satisfy the Court taking cognizance that the person deemed to be guilty of offence have role in the conduct of the business and in charge of the company. As far as the instant case, the cheque is for the discharge of the loan advanced to the company for its business purpose. The petitioner had stood guarantee for the loan advanced. She cannot deny knowledge of the borrowing or issuance of cheque just because she is not the signatory of the subject cheque. The complaint at paragraph (6) avers that the petitioner and the second accused as Directors of



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WEB COPY the first accused company are responsible for the conduct of the business. The burden is on the petitioner to disprove this averment. Thus, the facts of the case is materially different from the facts of the cases cited. Hence, the Criminal Original Petition to quash is liable to be dismissed.

13. Accordingly, ***this Criminal Original Petition is dismissed at SR stage itself.*** Consequently, connected Miscellaneous Petition is also dismissed.

01.11.2023

Index:yes
Speaking order/non speaking order
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To:

The Metropolitan Magistrate Cum Fast Track Judge-III, Madras



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VERDICTUM.IN



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Dr.G.JAYACHANDRAN, J.

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delivery order made in
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01.11.2023