BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	25.11.2024
Delivered on	27.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) Nos.1293 and 2281 of 2021
and
Crl.M.P. (MD) Nos.627, 1153 and 1154 of 2021

Crl.O.P.(MD) No.1293 of 2021

K.Sundari ... Petitioner

Vs.

C.A.R.P.Mari ... Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the impugned complained of the respondent in C.C.No.150/2020 on the file of Judicial Magistrate No.1, Manamadurai, Sivagangai Distrit, and quash the same.

Crl.O.P.(MD) No.2281 of 2021

R.Ashokan ... Petitioner

Vs.

C.A.R.P.Mari ... Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the proceedings in C.C.NO.150 of 2020 on the file of the Judicial Magistrate, Manamadurai and quash the same as against the petitioner.

For Petitioners	: Mr.V.Kathirvel Senior Counsel for Mr.K.Appadurai in Crl.O.P.(MD) No.1293 of 2021 Mr.G.Karuppasamy Pandian in Crl.O.P.(MD) No.2281 of 2021
For Respondent	: Ms.G.Dhanalakshmi

ORDER

The respondent filed a private complaint against the petitioners for offence under Section 138 of the Negotiable Instruments Act 1881, on the ground that A1 is working as a Principal of the college and A2 is the Managing Trustee of the college and the respondent is a building contractor and also happens to be the brother of A2.

2.An agreement was entered into and the services of the respondent was utilized for construction of a ground floor and computer hall for the college. The total expenditure for the construction was to the tune of Rs.1,49,64,700/-. This was also admitted by A2 and only a part amount was settled and for the remaining amount of Rs.98,07,207/-, a cheque was issued which was signed by A1. When the cheque dated 11.03.2020 was deposited for collection, it was returned with an endorsement 'Funds Insufficient'. Pursuant to the same, the private complaint has been filed before the Court below.

3.Heard the learned counsel for the petitioners and the learned counsel for the respondent.

4.The petitioner in Crl.O.P.(MD) No.2281 of 2021 is arrayed as A1 and it is stated that he was working as a Principal of the polytechnic college during the relevant point of time and he only signed the cheque. The main ground that was raised by the learned counsel for the petitioner appearing for A1 is that there was no legally enforceable debt for the petitioner towards the respondent and that apart, A1 had only signed in his official capacity and not in his individual capacity. Apart from that, A1 had retired from service as early as on 31.01.2020 and the legal notice was only sent to the college on 15.06.2020 and no notice was served on the petitioner which is mandatory under Section 138(b) of the Negotiable Instruments Act.

5.Insofar as A2 is concerned, it is contended that A2 was added later in the complaint even without issuing statutory notice to A2. That apart, A2 had demitted her office due to old age and illness in the year 2018 itself and the respondent was appointed as the management representative of the Trust and college from 2018 – 2019. Hence, during this period, the maintenance work was done and therefore, there is no question of A2 undertaking to settle the expenditure to the respondent. It is further contended that A2 is not the signatory in the cheque and therefore, the private complaint is not maintainable against A2.

6.The ground taken by A1 to the effect that he had retired from service as early as on 31.01.2020, is purely factual in nature and cannot be decided in the quash petition. Hence, the most important issue to be decided insofar as A1 is concerned is as to whether there was a legally enforceable debt between A1 and the respondent.

7.There is no dispute with regard to the fact that A1 at the relevant point of time was the Principal of the college. In that capacity, as the authorised signatory, A1 had signed the cheque. A1 did not give this cheque in his individual capacity or towards the debt or liability that was owed by A1 towards the respondent. *Ex consequenti* it must be seen as to whether A1 will come within the ambit of Section 141 of the Negotiable Instruments Act. The college cannot be equated to a company or a partnership firm in order to hold A1 vicariously liability on behalf of the college.

8.There is another angle to deal with this issue. In the case of a sole proprietor, if the cheque is singed by an authorized signatory, example, a Manager on behalf of the proprietorship concern and the the cheque gets dishonored, it is only the proprietor who will be liable to face the consequence and the authorized signatory cannot be made liable for the offence under Section 138 of the Negotiable Instruments Act. In other words, the concept of vicarious liability contemplated under Section 141 of the Act cannot be imported in those cases which does not fall within the ambit of the Company or a Partnership Firm.

9.In view of the above, A1 who was working as a Principal at the relevant point of time cannot be made to undergo a criminal trial just because he was the authorized signatory of the cheque and the liability in question was only the liability of the college and its management and not of A1.

10.Insofar as A2 is concerned, she is the sister of the respondent. The grounds that have been raised on the side of A2 to the effect that A2 was not in charge of the administration of the college and that it was only the respondent who was administering the college during the relevant point of time, are all issues of facts. The same cannot be gone into while dealing with the quash petition. It can only be established before the trial Court. The specific case of the respondent is that it was A2 who was the managing trustee of the college and based on the agreement entered into, the respondent had undertaken the construction activity and as a result, an amount became payable to the respondent. A2 having been shown as the managing trustee must be held to be responsible for settling the debt/liability incurred to the respondent. This is in view of the fact that the managing trustee is the one who runs the institution and takes care of the day-to-day affairs of the institution. There is no question of importing the concept of vicarious liability under Section 141 of the Negotiable Instruments Act. It is alleged that the college was under the direct control of A2 and therefore, the debt/liability has to be satisfied only by A2. The college is not a legal persona to look at it independently from the managing trustee. Hence, A2 has to necessarily face the trial and establish the defense.

11.One of the ground that has been raised on the side of both the petitioners is that statutory notice was not issued to them and therefore, there is non-compliance of Section 138(b) of the Negotiable Instruments Act. This submission is unsustainable since, on carefully going through the record, it is seen that the statutory notice was received in the college and a common reply was given by the then managing trustee for the statutory notice by taking various defense. Therefore, the private complaint filed by the respondent cannot be quashed on this ground.

12.This Court consciously did not go into the facts of the case which was argued in extenso and render finding on merits. The same will have an impact/bearing while the trial Court deals with the case. Therefore all the grounds that were raised by A2 can be raised before the trial Court and the same will be considered on its own merits and in accordance with law.

13. A2 is a lady aged more than 70 years. Therefore, this Court is inclined to dispense with the appearance of A2 and she can be represented through a counsel. A2 shall be present before the Court at the time of questioning under Section 313 of Cr.P.C. and at the time of final judgment. The counsel representing A2 shall cross examine witnesses on the same date they are examining in chief.

14.In the result, the proceedings in C.C.No.150 of 2020 on the file of the learned Judicial Magistrate, Manamadurai, is quashed insofar as A1 is concerned and the proceedings can continue as against A2. The proceedings shall be completed within a period of three months from the date of receipt of a copy of this order.

15.In the result, Crl.O.P.(MD) No.1293 of 2021 is dismissed and Crl.O.P.(MD) No.2281 of 2021 is allowed. Consequently, connected miscellaneous petitions are closed.

27.11.2024

NCC : Yes
Index : Yes
Internet : Yes
PKN

Note: Registry is directed to return the original records to the trial Court.

N.ANAND VENKATESH,J.

PKN

Crl.O.P.(MD)Nos.1293 and 2281 of 2021

Dated: 27.11.2024