

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/08/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRL.O.P.No.20410 of 2001  
and Crl.O.P. 25788 and 25799 of 2001  
and  
CRL.M.P.Nos.7045, 8979 and 8984 of 2001

1. A.Senthil Kumar  
2. Smt.A.Senthil Kumar .. Petitioners in all  
the petitions

-Vs-

Suresh Bafna  
Prop. Mansi Mercantile Co.,  
No.22, Mulla Saheb Street  
Sowcarpet, Chennai 79  
Rep. by Power of Attorney Agent  
G.Narasimhulu .. Respondents in all  
the petitions

All these criminal original petitions are filed under Sec.482 of the Code of Criminal Procedure to call for the records in C.C.Nos.3636, 3638 and 4068 of 2001 pending on the file of the VIII Metropolitan Magistrate, George Town, Chennai 1 and quash the same.

For Petitioners : Mr.T.S.N.Prabhakaran

For Respondents : No appearance

:COMMON ORDER

Despite service, there was no representation for the respondents. The Court heard the learned Counsel for the petitioners and perused the available materials.

2. All these three petitions are brought forth seeking to quash the three complaints with respect to the petitioners herein who are shown as 5th and 6th accused in the three calendar cases pending on the file of the VIII Metropolitan Magistrate, George Town, Madras.

3. All these three complaints were filed by one Suresh Bafna, the Proprietor of Mansi Mercantile Company, Madras, alleging that the accused No.2 is the Managing Director of the first accused company, wherein the accused 3 to 8 were the Directors during the relevant time; that all of them were managing and taking active part in the day-to-day administration of the first accused company; that the complainant advanced Rs.50,000/-, Rs.50,000/- and

Rs.50,000/- for which the second and the third accused signed and issued cheques bearing Nos.796005, 79 6006, 796007, 796008 and 796009 each for Rs.7,500/- dated 15.3.2001, 9.3.2001 and 13.3.2001 respectively; that when all those cheques were presented by the complainant through its banker Andhra Bank, Sowcarpet Branch, they were returned with an endorsement "insufficient funds"; and that after issuing the statutory notice and since the payments were not made as per the demand within the stipulated time, all these three complaints were lodged before the said Court. The learned Metropolitan Magistrate after recording the sworn statement of the complainant, has taken cognizance of all the three complaints, and they were numbered as C.C.Nos.3636, 3638 and 4068 of 2001. On service of summons, the fifth accused and the 6th accused who are shown as the Directors of the first accused company, have brought forth these three petitions seeking to quash the complaints in their regard.

4. Inter alia, the learned Counsel for the petitioners would submit that it is true that the 5th accused was originally a Director of the company when it was constituted in the year 1997, and thus, he relied on the Certificate of Incorporation, wherein the 5th accused is shown as a Director. It is pertinent to point out that the 6th accused is not shown as the Director at the time of incorporation. No material was placed before the Court to indicate that the 6th accused though the wife of the 5th accused, was ever a Director in the first accused company or had got anything to do with the day-to-day administration of the company. In the absence of the same, the 6th accused, at no stretch of imagination, can be roped in. So far as the 5th accused is concerned, the learned Counsel relied on the Form No.32 issued under the Companies Act, 1956, which speaks about the appointment and changes among the Directors. It would clearly indicate that the 5th accused has retired from his Directorship on 1.5.2000, and the same has also been recorded. But, from the three complaints, it could be seen that the cheques in question were issued on 9.3.2001, 13.3.2001 and 15.3.2001. Thus, it would be abundantly clear that all the five cheques were issued by the first accused company when the 5th accused was not a Director at all, since he retired from the Directorship on 1.5 .2000 itself. In the absence of any material available contra to show that on the date of the issue of those five cheques in question, A-5 and A-6 were Directors or they got touch with the company or they had connection with the day-to-day administration of the company, all the three complaints in their regard have got to be necessarily quashed. There cannot be any legal impediment for the lower Court to proceed with the complaint against the other accused persons.

5. In the result, these criminal original petitions are allowed, quashing the complaints in C.C.Nos.3636, 3638 and 4068 of 2001 on the file of the VIII Metropolitan Magistrate, George Town, Madras, against the petitioners/A-5 and A-6 alone. The learned Metropolitan Magistrate is directed to proceed with the complaint against others, leaving the petitioners/A-5 and A-6. Consequently, connected Cr.M.Ps. are closed.

Index: Yes

Internet: Yes

To:

The VIII Metropolitan Magistrate, George Town, Madras.

nsv/

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