

In the High Court of Judicature at Madras

Dated: 28/11/2003

Coram

The Honourable Mr. Justice M.THANIKACHALAM

Crl.O.P.No. 32072 of 2002

1. S.Karthick Perumal
2. Dr.B.Sivanthi Adithyan
3. M.Uttam Reddy
4. R.N.Bansal
5. T.K.Roy ..... Petitioners

-Vs-

M/s.Sterling Business Services Private Ltd.  
Rep. by its Director A.Ramnarayan  
62, Priya Flat, 1st Lane, Pantheon Road,  
Chennai-8. .... Respondent

Petition under section 482 Cr.P.C. to call for the records  
relating to C.C. No.9398/2002 on the file of XIV Metropolitan Magistrate,  
Emgore, Chennai and quash the same.

For petitioners :: Mr.R.Regupathy

For Respondents :: ---

:O R D E R

Accused 3 to 7 in C.C. No.9398/2002 on the file of XIV  
Metropolitan Magistrate Court, Egmore, Chennai have filed this petition to  
quash the proceedings against them, since no case is made out even as per the  
averments in the complaint.

2. M/s.Sterling Business Service Pvt. Ltd.,-respondent  
herein filed a complaint against the petitioners arraying them as accused 3 to  
7 in addition to against two accused. One of the accused, that is the first  
accused, is the firm called M/s.Aruna Sunrise Hotels Limited and the second  
accused Mr.M.Sivaraman appears to be the Managing Director of the said

company. According to the respondent/ complainant the accused have issued three cheques bearing Nos.404353, 404351, 404352 dated 10.6.2002, 10.7.2002 and 10.8.2002 respectively each for Rs.6,00 ,000/- as per the directions from M/s.Soundararajan & Company Pvt. Ltd., who have to pay legitimate debt to the complainant. It seems the respondent/complainant tendered the cheques for realisation and before the cheques are being realised, the drawer of the cheques had communicated to the bank where they are having their account, not to pay the amount or stop payment. In view of this, the cheques issued by the first accused represented by the second accused were not honoured. Thereafter, the complainant issued notice to all the accused requesting them to pay the amount, threatening prosecution also on their failure to pay the cheques amount. The notice also failed to evoke any positive result and therefore, a private complaint was filed against all the accused seeking appropriate punishment under section 138 read with 141 of the Negotiable Instruments Act.

3. The accused/petitioners are the Directors of the first accused company. According to them there was no debtor-creditor relationship between the company and the respondent and therefore, the non payment of the amount for the cheques issued by the first accused would not attract the penal provisions of the Negotiable Instruments Act. It is the further case of the petitioners that the allegations in the private complaint are insufficient to make out a case against the petitioners and therefore, they should be relieved of from facing the ordeal of trial unnecessarily. In this view, questioning the criminal proceedings initiated against them they have filed the petition to quash the proceedings as aforementioned, which is opposed.

4. Learned counsel for the petitioners submit that there was no debtor-creditor relationship between the company and the respondent and for the stop payment valid reason was given and in this view the accused/petitioners are not liable to pay the cheques amount and therefore, in the absence of cause of action the criminal prosecution shall not lie. The second contention is that there is no specific allegation in the complaint against the petitioners and as such these petitioners being non executive ordinary directors, not involved in the day-to-day affairs of the company, are not liable to be prosecuted.

5. Learned counsel for the respondent/complainant opposing the above contention would submit that admittedly the petitioners are also the directors of the first accused company and as such they are also bound to discharge the liability for which cheques were issued and in the absence of non compliance after the demand by notice, cause of action had arisen and in this view they are also liable to be prosecuted. To appreciate the facts in issue and to decide whether the petitioners could be made prima facie liable to be prosecuted, we have to see the provisions of sections 138 as well as 141 of the Negotiable Instruments Act in addition to the facts involved in this case.

6. M/s.Soundararajan & Company Pvt. Ltd. borrowed money from the complainant. The first accused acquired property from M/s. Soundararajan & Company Pvt. Ltd. Since M/s.Soundararajan & Company Pvt.

Ltd., has to pay some amount to the complainant herein, it appears M/s. Soundararajan & Company advised the first accused firm to issue cheques in favour of the respondent herein in order to discharge their legitimate debt. Only in this way three cheques bearing Nos.404353, 404351 and 40 4352 dated 10.6.2002, 10.7.2002 and 10.8.2002 were issued each for Rs.6,00,000/- in favour of the respondent. Admittedly when those cheques were tendered for collection, they were not honoured because of the instruction issued by the drawer of the cheques not to pay the amount thereby stopping payment. Even after the notice also admittedly the drawer of the cheques namely, the directors of the first accused company have not paid the amount. As aforementioned, a private complaint is filed as if the directors are also liable to pay the amount. It seems there was some dispute between the first accused and M/s. Soundararajan & Company Pvt. Ltd., in their dealings with the immovable property. According to the petitioners, M/s.Soundararajan & Company has not complied with the agreement or some thing like that and therefore, stop payment was issued for cheques issued by them. In this petition we are not concerned about the dispute between the petitioners and M/s.Soundararajan & Company Pvt. Ltd. If it is proved that in order to discharge the liability cheques were issued, then probably Section 138 will operate against the petitioners also subject to other conditions.

7. The contention of the learned counsel for the petitioners that there is no debtor-creditor relationship between the first accused company and the respondent appears to be unacceptable in view of the wordings incorporated in Section 138 of the Negotiable Instruments Act. Section 138 reads,

"Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability....."

A plain reading of the above section would indicate that there need not be always debtor-creditor relationship between the drawer of the cheque and the holder of the same. If the cheques were issued for any other liability, the same also should attract section 138 of the Negotiable Instruments Act in view of the fact it says specifically " other liability". The further contention of the learned counsel for the petitioners that there is no liability or debt between the first accused company and the complainant also would not survive because of the wordings employed in the section. The section does not say that the cheques should have been drawn for the discharge of any debt or other liability of the drawer towards the payee, whereas it says, where any cheque drawn by a person on an account maintained by him with a bank, for payment of any amount of money to another person from out of that account for the discharge in whole or in part of any debt or other liability. It further says if that cheque is returned by the bank unpaid, then the drawer is liable for the subsequent action. Therefore, the plain reading of the section makes it crystal clear that the debt or other liability may be due from any person. It is not always mandatory that the liability should be due from the drawer. The purpose of enacting this section is to give protection to the holder of the cheque, in order to enhance the credibility or the acceptability of the cheques. Therefore, it is immaterial that the cheque was issued for the discharge of the drawer's own debt or liability and it is sufficient to hold

that the cheque was issued for the discharge of another man's debt or liability also. In this view, if the cheques in question have been issued by the first accused in order to discharge the liability of another, then the company and its Managing Director would be answerable, in addition to the Directors also subject to their involvement in the business which I will discuss infra.

8. It is the specific case of the respondent/ complainant that M/s.Soundararajan & Company Pvt. Ltd. borrowed money from the complainant and as such with intent to discharge the said legitimate debt due to the complainant, M/s.Soundararajan & Company Pvt. Ltd. in turn instructed the accused to part with a portion of the sale consideration directly to the complainant. Only in this way the first accused company also agreeing to issue cheques addressed a letter to the complainant that they are acquiring immovable properties from M/s.Soundararajan & Company Pvt. Ltd., who had advised the first accused company to pay the complainant directly a sum of Rs.18,00,000/-. Thus, it is prima facie seen the liability or the debt payable by M/s.Soundararajan & Company to the respondent to the tune of Rs.18,00,000/- was undertaken by the first accused company to be discharged by the issue of cheques. Only in this way admittedly also three cheques were issued by the second accused representing the first accused. This act would squarely come within the meaning of issuing cheques for the discharge of debt or liability, whether it is payable by the first accused to the respondent or not. Here the first accused undertook to discharge Rs.18,00,000/- payable by M/s.Soundararajan & Company to the respondent and in this view the cheques issued by the first accused company squarely come within the four walls of section 138. Therefore, I am of the considered opinion that irrespective of the fact that there was no debtor-creditor relationship between the first accused and the respondent, they are liable to pay the amount since they have undertaken to discharge and in this way cheques were also issued. If for any reasons for the non-compliance of certain conditions by M/s.Soundararajan & Company Pvt. Ltd., the first accused company is not liable to pay the amount then the same has to be agitated and established, if possible, before the trial court and this could not be decided by this court under section 482 Cr.P.C. Prima facie to proceed against the accused especially against the first accused and the second accused there are sufficient materials available by way of pleadings and therefore, it is impossible to conclude that the private complaint itself is not maintainable. Thus, concluding the cheques were issued to discharge the liability, whether it is the liability of the petitioners or not, we have to see further whether the petitioners are liable to be prosecuted.

9. Learned counsel for the petitioners submits that the petitioners are non executive ordinary directors and they were not in the day-to-day affairs of the company being incharge of the business and therefore, as such without a specific allegation in the complaint against the petitioners, the prosecution will not lie. From the reading of the averments contained in the complaint as well as going through section 141 of the Negotiable Instruments Act coupled with judicial precedent, I am unable to say no to the above said submission. Any petition of this nature to quash the proceedings, this Court has to see the prima facie allegations, if not

rebutted, whether would lead to the conviction and it should not be the endeavour of this Court whether the allegations levelled would sustain the conviction. In this context we have to see the pleadings.

10. It is not in dispute that accused 3 to 7 are the Directors of the first accused company. According to them they are only non executive ordinary directors. When a notice was issued after the return of the cheques, this fact was informed to the respondent/complainant. Despite that fact, the respondent has not specifically averred in the complaint implicating the petitioners/accused 3 to 7 also though they have denied the averments in the reply notice. Paragraph 7 of the complaint reads thus: "The first respondent/first accused as the company and other accused as Directors are jointly and severally liable for the illegal acts perpetrated against the complainant herein." Except the above averments, as pointed out by the either counsel, I am unable to see any other allegations, clinchingly implicating the petitioners indicating that as Directors these people are also liable to discharge for the specified reasons. Having the above pleadings in mind, we have to see the section and the law prevailing as on this date.

11. Section 141 of the Negotiable Instruments Act deals with the offences committed by the companies. The company is arrayed as the first accused and the Managing Director, who issued the cheque is arrayed as the second accused. In this petition the proceedings against them are not questioned. If the Directors of the first company are also held to be responsible, then they should be shown that the Directors were responsible to the company for the conduct of the business of the company involving themselves in the day-to-day affairs. The proviso is very clear that sub-section (1) shall not render any person liable to punishment if he proves that the offence was committed without his knowledge or he had exercised all due diligence to prevent the commission of such offence. Clause 2 says if it is proved that the offence has been committed with the consent or connivance or is attributable to any neglect on the part of any Director, Manager, Secretary or other officers of the company, then they also shall be deemed to be guilty of that offence. Thus it is clear from the reading of the section that (1) ordinary directors or the non executive directors, as the case may be, would be made liable to be punished if it is shown that they were incharge of the day-to-day business or they were responsible for the conduct of the business of the company, (2) that the offence was committed by the company with the consent or connivance of the Directors. In order to say that these two ingredients are available there must be pleadings prima facie. If not, no useful purpose would be served in trying a case against those persons, against whom no allegations are levelled in the petition. I have already pointed out about the non availability of the specific averments attracting the above said ingredients under section 141. In this view, it appears to my mind that as such even as per the allegations in the complaint the accused/petitioners could not be made liable for the issue of the cheques by the second accused representing the first accused. The fact that the petitioners are having some interest in the first accused company or in the properties acquired by the company would not lead to the inference that they should be made criminally liable unless the requirements of section 141 are complied with, which are

absent here.

12. Learned counsel for the petitioners submits relying on a decision reported in 107 Company Cases 600 (Techno Futura International Ltd. v. T.S. Anthony Samy) that the petitioners 3 to 7 being the Directors interested in the first accused company are also liable to be prosecuted. As seen from this decision, it seems in the complaint it is clearly stated that the accused therein 3 to 8 were responsible for the conduct of the business of the company and therefore, in that view this Court has held question of quashing the proceedings would not arise. Here, as pointed out, it is not even stated in the complaint that these petitioners are responsible for the conduct of the business of the company. Therefore, applying the above dictum retaining the petitioners as accused in C.C. No.9398/2002 may not be proper, that too in view of the dictum laid down by the Apex Court of this land.

13. Learned counsel for the petitioners submits that there are no required and sufficient averments in the complaint so as to attract the offence under the Act and as such the proceedings against the petitioners are bound to be dropped placing reliance in S.N. Bangur & Others v. M/s. Klen & Marshalls Mfrs. And Exporters Pvt. Ltd. (2002-2-L.W. (Cri.) 724). This Court, considering the previous decision of the Apex Court ruled that in the absence of sufficient averments proceeding against those accused is not proper.

14. In Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd. (2003 SCC (Cri) 151) it is ruled as follows:

"In short the partner of a firm is liable to be convicted for an offence committed by the firm if he was in charge of and was responsible to the firm for the conduct of the business of the firm or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of the partner concerned."

The ruling in K.P.G. Nair v. Jindal Menthol India Ltd. (2000(6) Scale 578) was confirmed in the above case. In the case involved in the above decision also it seems that there was no allegation that the Director was involved in any of the transactions referred to in the complaint and it is also not stated that he was in charge of the business and responsible for the conduct of the business of the firm in terms of section 141 of the Act. It seems there was no other allegations made against the accused that he had connivance with any other partner in the matter of issue of cheque. Exactly more or less the facts also fits in with our present case. As quoted supra, there is no allegation against the petitioners stating that these petitioners involved in any of the transactions or they have connived with the accused Nos. 1 and 2 or the offence was committed with the consent of these petitioners or attributable to any neglect act on the part of the petitioners etc. In the absence of any such allegations, if we take the complaint as such I should see no case is made out against the petitioners to proceed further under section 138 read with 141 of the Negotiable Instruments Act. On this ground, I am of the opinion the proceedings against the accused 3 to 7 namely, the petitioners has to be dropped.

15. In the light of the above discussions, I conclude the

proceedings as against the petitioners namely, accused 3 to 7 are liable to be dropped and accordingly dropped allowing this petition to the above said extent. The trial court is directed to dispose the case against the other accused. Consequently, Crl.M.P.No.13018/2002 is closed.

Index: Yes.

Website: Yes.

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To

1. XIV Metropolitan Magistrate,  
Egmore, Chennai.

2. -do- through the Chief Metropolitan  
Magistrate, Chennai.  
M.THANIKACHALAM, J.

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