

Manoj Kumar Vs. B.Ramakrishniah

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Court : Chennai

Decided On : Jun-25-2014

Judge : T.S.Sivagnanam

Appellant : Manoj Kumar

Respondent : B.Ramakrishniah

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :25.06.2014
CORAM THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM Cri.O.P.No.22234
of 2013 1.Manoj Kumar 2.Ashwani Kumar ..Petitioners -Vs- B.Ramakrishniah
..Respondent Petition filed under Section 482 of Cr.P.C., to call for the records in
C.C.No.1004 of 2011 on the file of Fast Track Court No.I, Egmore and quash the
proceedings in so far as it related to them. For petitioners: Mr.A.Raghunathan,
Senior Counsel for Ms.S.S.Jaynathi For respondent : Ms.P.Bhuvanewari

ORDER

This petition has been filed under Section 482 of Cr.P.C., to quash the complaint
in C.C.No.1004/2011 pending on the file of Fast Track Court No.1, Egmore,
Chennai. The petitioners are the accused 3 and 4. In the said complaint filed by
the respondent under Section 138 read with 142 of the Negotiable Instruments Act
as Amended under Act 55 of 2002, the first accused is a Private Limited Company
represented by its Managing Director. The second accused is the Managing
Director of the first accused company and the third accused and fourth accused

are described as Director of the first accused company.

2. Mr.A.Raghunathan, learned Senior Counsel appearing for the petitioner, by referring paragraph 8 of the complaint submitted that there is no specific averment against the petitioners herein/ 3rd and 4th accused that they are actively involved in the day to day affairs of the first accused company and such other matters and on that ground itself, the complaint is liable to be quashed. Further it is submitted that a reading of the complaint conveys the impression that the allegations made against the first accused and the second accused-Managing Director of the Company and the complaint as against the petitioners herein is not maintainable in the absence of averment to the effect that at the time of issuance of cheque, the petitioners are responsible with the conduct of the business of the company. Further it is submitted that the complaint is silent on the crucial aspect as to how and in what capacity the petitioners are in charge of the business of the company. Therefore, the learned Senior Counsel submitted that the complaint has to be quashed.

3. Ms.P.Bhuvaneswari, learned counsel for the respondent submitted that as against the third accused viz., Manoj Kumar, it may be true that there is no specific averment in the complaint as against the said Manoj Kumar and the quash petition may be allowed by quashing the proceedings against the first petitioner.

4. Learned counsel for the respondents submissions on instructions is placed on record and that the complaint against the first accused / Manoj Kumar /A3 is quashed.

5. So far as the second petitioner/4th accused, learned counsel for the respondent referred to the Memorandum of Articles of Association of the first accused company and submitted that all the three accused have been shown as Directors in the list of Directors and the second petitioner/4th accused Ashwani Kumar is also the Director holding equal amount of shares as that of the other Directors. Learned counsel referred to the Balance Sheet, wherein Ashwani Kumar/4th accused has signed as a Director. Further it is submitted by the learned counsel that the cheque in question was dated 30.04.2010 for Rs.50,000/- and the cheque dated 05.05.2010 for Rs.50,000/- has been signed by the fourth accused Ashwani

Kumar and therefore, it is evidently clear that he was actively involved in the business and he was responsible for the business of the company and was contacting with the complainant and negotiating all the matters. It is further submitted that the petitioners did not appear for the proceedings in the trial court and hence Non Bailable Warrant was issued against the petitioner. Even then, they did not appear and hence, this quash petition is filed.

6. Heard the learned counsel for the parties and perused the materials placed on record.

7. In the light of the submissions made by the learned counsel as observed earlier, the complaint against the first petitioner/3rd accused has been quashed. So far as the second petitioner/4th accused, it is to be noted that the respondent has filed documents such as Balance Sheet as at 31st March 2007, which contains signature of the fourth accused Ashwani Kumar. Similarly, Profit and Loss account for the same year shows the signature of Ashwani Kumar and on prima facie comparison with the signature of the cheque in question, it is seen that Ashwani Kumar has signed the cheque. Therefore, this being the disputed question of fact cannot be gone into at this stage. The complaint against the fourth accused/second petitioner cannot be quashed at this stage.

8. Learned Senior Counsel referred to the decision of the Honble Supreme Court in the case of State of NCT of Delhi through Prosecuting Officer, Insecticides, Government of NCT, Delhi Vs. Rajiv Khurana reported in (2010) 11 Supreme Court Cases 469. In the said decision, the Honble Supreme Court, after referring to the earlier decision viz., in the case of K.K.Ahuja Vs. V.K.Vora reported in (2009) 10 SCC48 held 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 companys business and in the absence of any such averment, he cannot be held liable.

9. To decide this question, if the facts are not in dispute, this Court would have entertained the averment, though a vague averment has been made in the complaint. The complainant has produced Memorandum of Articles of Association, Balance Sheet, Profit and Loss account statement and the copies of two cheques

from which prima facie it appears that the second petitioner/fourth accused has signed in the capacity of the Director. Therefore, this being a disputed question of fact, this Court is not inclined to quash the complaint at this stage of the matter. Therefore, it is left open to the parties to agitate before the Court below.

10. Learned Senior counsel also relied on the decision of the Honble Supreme court in the case of Anita Mahotra Vs. Apparel Export Promotion Council and Another reported in (2012) 1 Supreme Court Cases 520. In the said decision, the Honble Supreme Court had pointed out that by referring to the earlier decision in the case of Harshendra Kumar D. Vs. Rebatilata Koley reported in (2011) 3 SCC351 observed in the said case that except for the bald and cursory statement, there is no specific averment as regards the role of the accused in the said case in the day to day affairs of the company. It is also pointed out that it is a settled legal position that while exercising jurisdiction under Section 482 of Cr.P.C., it is not proper for the High Court to consider the defence of the accused or conduct a roving enquiry in respect of merits of the accusation, but, if on the face of the document, which is beyond suspicion or doubt, placed on record by the accused and if it is considered that the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, the High Court may look into the materials, which have bearing on the matter.

11. Prima facie, on the materials placed by the complainant viz., the Memorandum of Articles of Association, Balance Sheet and Profit and Loss account and the cheques in question is not convincing, this Court is not convinced to hold that prima facie there is no material as against the second petitioner/4th accused.

12. Hence, for all the above reasons, the complaint as against the first petitioner/3rd accused is quashed and so far as the petition filed by the second petitioner/4th accused is dismissed. 25.06.2014 Index:Yes/No nvsri 1.The Registrar, Fast Track Court No.I, Egmore. T.S.SIVAGNANAM, J.

nvsri Order in Crl.O.P.No.22234 of 2013 25.6.2014

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