

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26-8-2015

Pronounced on : 01-9-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.21138 of 2015 & M.P.No.1 of 2015

Dr.Usha Muthukrishnan

.. Petitioner

Vs.

M/s.S.A.S.Engineering (P) Ltd.,
rep.by its Managing Director,
Chandrakumar Oliver,
Old No.18, New No.8,
Chittaranjan Road, Teynampet,
Chennai - 600 018.

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to call for the records in C.C.No.9389 of 2010 from the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the said private complaint as against the petitioner.

For Petitioner : Mr.M.K.Kabir,
Senior Counsel
for Mr.T.Jayaraman

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O R D E R

For the sake of convenience, the parties will be referred to as 'the Complainant' and 'the accused'.

2. It is the case of the complainant M/s.S.A.S.Engineering Private Limited that they and one M/s.Senith Metal Pressing entered into a rental agreement on 30.4.2004 with M/s.Hospital Equipment Systems (A-1) for taking on rent a property belonging to A-1 and a sum of Rs.48,70,000/- was paid as rental advance to A-1. The lease was upto May, 2009. After expiry of the lease period, the Complainant demanded return of rental advance from the accused and a cheque dated 8.3.2010 for Rs.10 lakhs, signed by Muthukrishnan (A-3)

was given to the complainant. The said cheque was returned on 9.3.2010 for insufficiency of funds.

3. The complainant issued statutory demand notice dated 23.3.2010 and since the accused did not comply with the demand, a complaint for the offence under Section 138 of the Negotiable Instruments Act, was lodged by the Complainant against M/s.Hospital Equipment Systems (A-1), Dr.Usha Muthukrishnan (A-2), Muthukrishnan (A-3) and Giri Muthukrishnan (A-4). The said complaint was taken on file in C.C.No.9389 of 2010 by the XVIII Metropolitan Magistrate, Saidapet, Chennai, and processes were issued to the accused.

4. Giri Muthukrishnan (A-4), who is the son of Dr.Usha Muthukrishnan (A-2) and Muthukrishnan (A-3), filed Crl.O.P.No.3135 of 2011 challenging the prosecution and obtained stay of the proceedings. The matter was pending till 2014 and ultimately on 12.11.2014 Crl.O.P.No.3135 of 2011 was allowed by this Court by holding that Giri Muthukrishnan (A-4) was never a partner in A-1 Company and the proceedings were quashed as against him. Now his mother Usha Muthukrishnan (A-2) has come up with this petition by contending that at the relevant point of time, when the cheque was issued, she was not a partner of the Company and on that ground the prosecution is to be quashed.

5. Heard Mr.M.K.Kabir, learned Senior Counsel appearing for the petitioner, who took this Court through the Partnership Deed dated 24.4.1995, which shows that Dr.Usha Muthukrishnan (A-2) and Muthukrishnan (A-3) are partners in A-1 Company. In the rental agreement dated 30.4.2004, Dr.Usha Muthukrishnan (A-2) is shown as Managing Partner along with her husband Muthukrishnan (A-3), who has been shown as working partner in M/s.Hospital Equipments Systems (A-1), and that, both of them have signed the rental agreement as partners of A-1 Company, along with the Complainant. It is Mr.M.K.Kabir's contention that thereafter the partnership was dissolved on 10.6.2005 by a Deed of Dissolution of Partnership, by which the partnership firm M/s.Hospital Equipment Systems (A-1) has become defunct, and therefore Dr.Usha Muthukrishnan (A-2) cannot be prosecuted vicariously under Section 138 of the Negotiable Instruments Act. He also submitted that there is a suit pending between the parties in O.S.No.525 of 2010 before the District Munsif Court, Alandur. Mr.M.K.Kabir also pointed out that the dissolution of partnership has been validly intimated to the Registrar of Firms by submitting appropriate forms, which this Court should take judicial notice of, as they are documents of sterling character.

6. This Court gave its anxious consideration to the submissions of learned Senior Counsel.

7. Admittedly at the time of entering into the rental agreement with the Complainant on 30.4.2004, Dr.Usha Muthukrishnan (A-2) was designated as the Managing Partner, and that, she had signed the rental agreement. Thereafter, what transpired among the partners was not made known to the Complainant. The impugned cheque for Rs.10 lakhs was given on 8.3.2010 and on perusal of the cheque it is clear that it has been issued from the account held by M/s.Hospital Equipments Systems (A-1) and Muthukrishnan (A-3) has signed the cheque as partner of the A-1 Company. The cheque was not returned on the ground that A-1 Company has been dissolved and account closed, but, on the ground of insufficiency of funds. This means that the Bank has not been intimated even in 2010 about the alleged dissolution of the partnership in the year 2005. This is nothing short of rank subterfuge and a well thought-out scheme by the Muthukrishnan couples to defraud the creditors.

8. Yet another aspect that requires to be borne in mind is that the complainant issued the statutory notice under Section 138 of Negotiable Instruments Act to all the accused, but they did not receive the notices, and the notices were returned to the complainant on the ground "intimation delivered, unclaimed, returned to sender". This conduct of the accused does raise suspicion in the mind of the court, coupled with the fact that they obtained stay in 2011 by filing a quash application in the name of their son Giri Muthukrishnan (A-4), and after it was disposed in 2014, they have now come up with the second round of litigation to quash the proceedings of the year 2010.

9. In fact in *Dashrath Rupsingh Rathod Vs. State of Maharashtra*, ((2014) 9 SCC 129), the Supreme Court held that prosecution for the offence of cheating can also be maintained along with a complaint for the offence under Section 138 of Negotiable Instruments Act.

10. The pendency of O.S.No.525 of 2010 cannot be a ground for quashing the prosecution inasmuch as the prayer in O.S.No.525 of 2010 is for permanent injunction restraining the defendant (complainant) from entering into or interfering in any manner with the peaceful possession and enjoyment of the plaintiff (A-3) in respect of the suit properties therein. As held by the Supreme Court in *S.Krishnamurthy v. Chellammal*, 2015 (4) Scale 371, this Court cannot go into the disputed question of fact while considering the petition filed under Section 482 of Cr.P.C. The complaint clearly discloses that Dr.Usha Muthukrishnan (A-2) is the Managing Partner and the impugned cheque was issued at her instance, which averments are sufficient to prosecute Dr.Usha Muthukrishnan (A-2) with the aid of Section 141 of the Negotiable Instruments Act.

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Sub Assistant Registrar

To

2. -do- Through The Chief Metropolitan Magistrate, Chennai.

Cr1.O.P.No.21138 of 2015

Sub Assistant Registrar

III, Metropolitan Magistrate, Saidapet, Chennai

Through The Chief Metropolitan Magistrate, Chennai

Mr.T. Jayaraman, Advocate SR.46549

Crl.O.P.N

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