

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2015

CORAM

THE HON'BLE MR. JUSTICE R.S.RAMANATHAN

CrI.O.P.No.22370 of 2009
and
M.P.Nos.1 & 2 of 2009

M.Jayanthi

...Petitioner

vs.

1.P.K.Subramaniam

2.M/s.Mohan & Co

Venkateswara Sago Factory by its
Managing Partner, P.Mohan.

3.P.Mohan

...Respondents

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for the records relating to S.T.C.No.1383 of 2007 on the file of the Judicial Magistrate, Rasipuram, Namakkal District and quash the same.

For Petitioner : Mr.T.Dhanyakumar

For Respondents : Mr.R.Karthikeyan for R1

O R D E R

This petition is filed by the third accused in S.T.C.No.1383/2007 on the file of the learned Judicial Magistrate, Rasipuram, Namakkal District to quash the proceedings as against him

2. The learned counsel for the petitioner submitted that no allegation has been made in the complaint given by the first respondent that the petitioner, who has been arrayed as third accused, has taken active part in the management of the business or was responsible for the conduct of the business of the partnership

firm. He therefore submitted that in the absence of any specific allegation regarding the role played by the petitioner, prosecution cannot be launched against the petitioner and relied upon the judgements in K.K.Ahuja v. V.K.Vora and another [2009 (5) CTC 81] and Monaben Ketanbhai Shah and another v. State of Gujarat and Others [2004 (4) CTC 317].

3. The learned counsel for the first respondent/complainant submitted that admittedly the petitioner is a partner in the first accused partnership firm and in a partnership firm, every partner is presumed to be liable and therefore, the petitioner has been implicated as third accused in the case.

4. I am unable to accept the contention of the learned counsel for the petitioner. As per Section 141 of the Negotiable Instruments Act, 1881, a person who at the time of commission of offence was in-charge and was responsible for the conduct of the business shall be liable to be prosecuted and therefore, there must be specific allegation in the complaint that the petitioner/third accused was in-charge and responsible for the conduct of the business of the partnership firm. Admittedly, no such allegation is found in the complaint and as rightly held by the Hon'ble Supreme Court in Monaben Ketanbhai Shah and another v. State of Gujarat and Others [2004 (4) CTC 317], no prosecution can be launched against the petitioner.

5. Hence, this Criminal Original Petition is allowed and the proceedings in STC.No.1383/2007 on the file of the Judicial Magistrate, Rasipuram, Namakkal District is quashed insofar as the petitioner is concerned. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jvm

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To

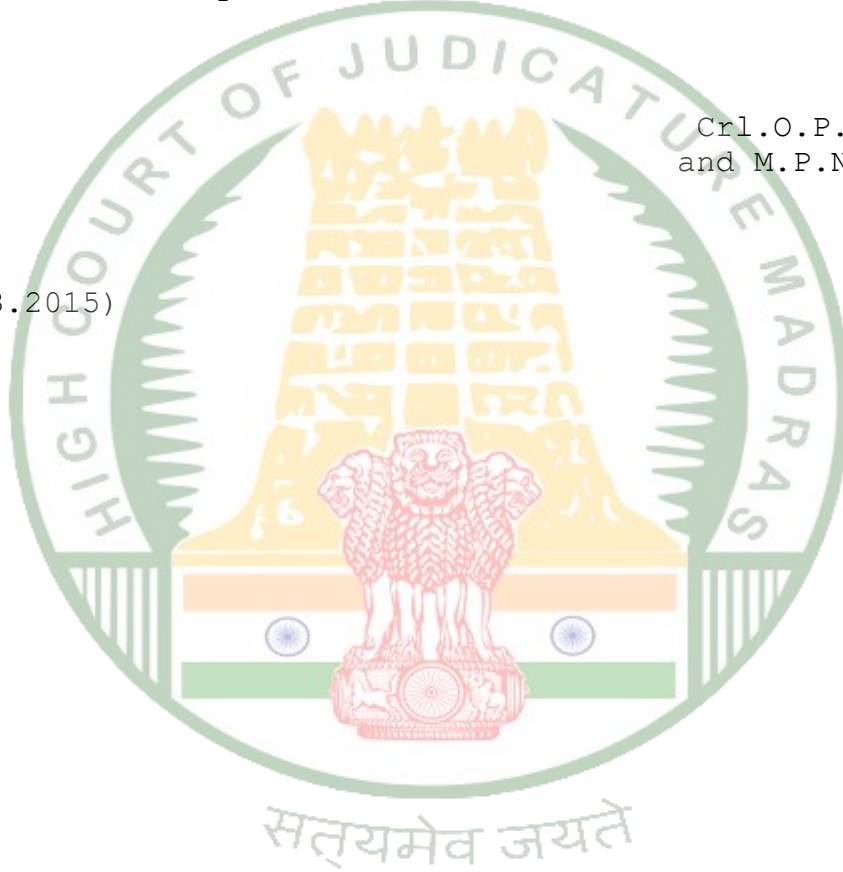
The Judicial Magistrate,
Rasipuram,
Namakkal District

1 CC to Mr.T.Dhanyakumar, Advocate SR.No. 15206

1 CC to Mr.R.Karthikeyan, Advocate SR.No.15004

Crl.O.P.No.22370 of 2009
and M.P.Nos.1 & 2 of 2009

LRS (CO)
PSI (30.03.2015)



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