IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.Nos.14829 & 15165 of 2014 &
M.P.Nos.1, 1, 2 and 2 of 2014

M.Hemalatha, W/o.P.Murugesan,
Aged about 36 years,
Proprietrix Ms.,Sri Balaji Dhall Mill,
No.6/4, G.A.Road, Second Floor,
Old Washermenpet,
Chennai - 600 021. .. Petitioner in both O.Ps./ 2nd Accused

Vs.

D.Kannan,
S/o.V.N.Dhanapalan,
Prop. M/s.Angel Enterprises,
No.65, Acharappan Street,
Chennai - 600 001... Respondent in both O.Ps. (Complainant)

Prayer in Crl.O.P.Nos.14829 & 15165 of 2014: Criminal Original Petitions are filed under Section 482 of Cr.P.C., to call for the entire records pertaining to proceedings in C.C.No.3088 of 2013 and C.C.No.3087 of 2013 pending on the file of the Fast Track - IV Metropolitan Magistrate, G.T. Chennai and quash the same against the petitioner.

For Petitioner in both Ops :M/s.SaiRam Associate

For Respondent in both OPs : Mr.R.C.Manoharan

C O M M O N   O R D E R

These petitions have been filed to call for records pertaining to C.C.Nos.3088 and 3087 of 2013 on the file of the Fast Track IV Metropolitan Magistrate, Chennai and quash the same as against the petitioners.

2. The petitioner in Crl.O.P.No.14829 and 15165 of 2014, who has been arrayed as A2 in C.C.Nos.3088 and 3087 of 2013 has

come forward with these applications to quash the proceedings stating that she is not the drawer of the cheque and the cheques have been issued by one Murugesan, who is the first accused in the case and hence she has not committed the offence punishable under section 138 of the Negotiable Instruments Act (herein after called as Act). Hence she has come forward for quashing the same.

3. Resisting the same, the learned counsel for the respondent would submit that the petitioner is the proprietrix of M/s.Sri Balaji Dhall Mill and this respondent has supplied Dhall to M/s.Sri Balaji Dhall Mill and on behalf of the proprietrix, the husband of the petitioner, as an authorized signatory has issued the cheques and so the cheques were presented for encashment, which were returned as insufficient funds and after issuance of statutory notice under section 138 (b) of the Negotiable Instrument Act and as they have not repaid the amount, he has preferred the complaint under section 138 of the Negotiable Instruments Act. He further submitted that M/s.Sri Balaji Dall Mill is a Proptrietrix concern and the sales tax returns of the proprietrix concern has been filed by the petitioner to the Commercial Tax Department and as a proprietrix of M/s.Sri Balaji Dhall Mill, she is a necessary party to the proceedings. He further submitted that the case has been posted for the questioning under section 313 Cr.P.C. and therefore prayed for dismissal of these petitions.

4. Considering the rival submissions made by both sides and on perusal of the typed set of papers, that the respondent herein as a proprietor of Angel Enterprises preferred the complaint stating that M/s.Sri Balaji Dhall Mill was having business transactions and since there was amount due and to discharge the same, as an authorized signatory, one Mr.Murugesan, who is none other than the husband of the petitioner has issued cheques for discharging legally enforceable debt. When the cheques were presented for encashment, they were returned as insufficient fund. Thereafter, the statutory notice was issued under section 138(b) of the Negotiable Instruments Act and after receipt of the reply, since the amount has not been repaid, complaint has been preferred.

5. It is true that the cheques in both the cases have been signed by the authorized signatory, the husband of the petitioner. This petitioner as a proprietrix of M/s.Sri Balaji Dhall Mill was added as a party. In the complaint, in paragraph 3, it has been specifically mentioned that the goods have been supplied to M/s.Sri Balaji Dhall Mill.

6. A proprietary concern does not have a separate legal entity apart from its proprietor since the proprietary concern and the proprietor are one and the same person. Thus, proprietary concern is not an independent, legal and juristic entity having legal recognition in the eye of law and it can neither initiate proceedings nor proceedings be initiated against it. In the instant case, the proprietrix and she authorized her husband to M/s.Sri Balaji Dhall Mill. Since she has authorized her husband, he signed the heque. So, as a proprietrix, she is liable for the Criminal Prosecution. Merely because the proprietrix is not the drawer of the cheque, shall not escape her from the cluthces of law, since she is running a proprietrix concern and she is the juristic person to be sued. In such circumstances, the arguments advanced by the learned counsel for the petitioner that she is not involved in day to day affairs of the business and she is not the drawer of the cheque cannot be accepted. Since the proprietary concern and the proprietor are one and the same person and since the goods have been supplied to M/s.Sri Balaji Dhall Mill and merely because she is not the drawer of the cheque will not exonerate her from the criminal liability and hence she is a necessary party to the proceedings. As a sole proprietrix of M/s.Sri Balaji Dhall Mill, she has filed the Sales Tax Returns to the Commercial Department and as such the petitioner is liable to the legally enforceable debt of the proprietrix concern. Hence, these applications are devoid of merits and are liable to be dismissed.

7. Hence, the Criminal Original Petitions are dismissed. Since the cases are posted for questioning under section 313 Cr.P.C., the trial Court, the Fast Track No.IV Metropolitan Magistrate, George Town, Chennai is directed to dispose the cases in C.C.Nos.3087 and 3088 of 2013 within two months from the date of receipt of a copy of this Order. Consequently, the connected miscellaneous petitions are dismissed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

vrc

To

The Fast Track No.IV Metropolitan Magistrate,
George Town,
Chennai. 1

4 ccs to Mr.R.C. Manoharan, Advocate, Sr. 9206, 9208
2 ccs to Mr.S.T. Raja, Om Sairam, Advocate, Sr. 9481, 9480

Crl.O.P.Nos.14829 & 15165
of 2014

SV (CO)
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