

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.608 of 2016

and

Crl.M.P.Nos.4220 of 2016

M/s.VGN INFRA INDIA PVT LTD.,

Represented by its Legal Officer Mr.Mahadevan,

No.15, Wallance Garden 2nd Street,

Nungambakkam, Chennai - 600 034.

... Petitioner

vs.

1.M/s.Jupiter Contractors,

A Partnership firm represented by

Mr.S.Sivasubramaniam

2.Mr.S.Sivasubramaniam,

Managing Partner of M/s.Jupiter Contractors,

Both at Sri Balaji Apartments,

No.18 & 19, Kondal Iyer Street,

Kondithope, Chennai -600 079.

3.Mrs.Kaliswari

Partner of M/s.Jupiter Contractors,

Both at Sri Balaji Apartments,

No.18 & 19, Kondal Iyer Street,

Kondithope, Chennai -600 079.

4.Mrs.Rajalakshmi,

Partner of M/s.Jupiter Contractors,

Both at Sri Balaji Apartments,

No.18 & 19, Kondal Iyer Street,

Kondithope, Chennai -600 079.

5.Mr.Srinivasan,

Partner of M/s.Jupiter Contractors,

Both at Sri Balaji Apartments,

No.18 & 19, Kondal Iyer Street,

Kondithope, Chennai -600 079.

... Respondents

Criminal Revision filed under Section 399 r/w 401 of Cr.P.C., to set aside the order dated 21.01.2016, passed by the Learned Metropolitan Magistrate FTC-II, Egmore, Allikulam Road, Chennai in CrI.M.P.No.1228 of 2014 in C.C.No.5278 of 2011 and thereby implead the proposed respondents as accused in the above C.C.No.5278 of 2011.

For Petitioner :Mr.A.Ragunathan
Senior Counsel
for M/s.P.Ramesh Kumar
For Respondents:No Appearance

O R D E R

This revision arises against the judgment dated 21.01.2016, passed by the Learned Metropolitan Magistrate FTC-II, Egmore, Allikulam Road, Chennai in CrI.M.P.No.1228 of 2014 in C.C.No.5278 of 2011.

2. Petitioner/de facto complainant moved a petition under section 319 Cr.P.C, praying to include the 3rd respondent/Kaliswari as an accused in case being tried in C.C.No.5278 of 2011 on the file of learned Metropolitan Magistrate Fast Track Court II, Egmore, Allikulam Road, Chennai. Such petition came to be dismissed under the impugned order giving rise to this revision.

3. Heard learned counsel for petitioner. Though respondents have been served, there is no representation on their behalf.

4. This Court readily would accept the submission of learned senior counsel for petitioner that though the first respondent/accused is a firm, there are averments in the complaint that the respondents 3 to 5 are in-charge of and responsible for the day-to-day affairs of the firm. The prayer for prosecution of the third respondent could be sustained given the indisputable position that she is the signatory of the cheque and hence, was liable to be prosecuted for offence under section 138 of the Negotiable Instruments Act. It is not necessary that each and every partner should be served with statutory notice under Section 138 of the Negotiable Instrument Act. It would suffice if the firm is served. Notice there upon would amount to notice also on persons who are in charge of day-to-day affairs of the firm. Further, in the instant case, the Manager of the bank of the first accused has been examined as PW.2 and he has deposed to third respondent taking part in the day-to-day affairs of the firm.

5. In the circumstances, this Court is of the considered view that the Court below ought to have allowed the petition under section 319 of Cr.P.C in so far as the 3rd respondent is concerned. However, there is no material for prosecution of the 4th and 5th respondents.

6. In the result, the Criminal Revision is partly allowed with a direction to include the 3rd respondent as accused in C.C.No.5278 of 2011 dated 21.01.2016, on the file of Learned Metropolitan Magistrate FTC-II, Egmore, Allikulam Road, Chennai.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Learned Metropolitan Magistrate FTC-II,
Egmore, Allikulam Road, Chennai.

+1cc to M/S.P.Ramesh Kumar, Advocate Sr.64488

Crl.R.C.No.608 of 2016

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