

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.12.2016

CORAM

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Cr1.O.P. No.14689 of 2010
& M.P.No.1 of 2010

Radhika Ramesh .. Petitioner

versus

Ashok Kumar N.Jain,
Proprietor,
M/s.Mahaveer Investment,
Rep.by Ritesh Kumar,
S/o.Ratanchand, 31 years,
Power Agent,
No.376, Mint Street,
Chennai - 600 079. ... Respondent

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.952 of 2009 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai and quash the said proceedings thereon.

For Petitioner : Mr.V.Sairam
For Respondent : Mr.L.Prabakaran

O R D E R

This Criminal Original Petition has been filed by the petitioner to quash the proceedings in C.C.No.952 of 2009 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai.

2.The petitioner has been arrayed as second accused in C.C.No.952 of 2009 pending on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai. It is a private complaint filed by the respondent in terms of Section 200 of Cr.P.C. for an offence punishable under Section 138 of the Negotiable Instruments Act.

3.The first accused Company was represented by the petitioner / second accused as its authorised signatory. It is alleged in the complaint that the first accused is a Private

Limited Company and it borrowed Rs.56,500/- from the complainant and in discharge of the said liability, the first accused issued cheque dated 06.01.2009 in question in favour of the complainant. The cheque was dishonoured when presented for collection citing "Account Closed" on 09.01.2009.

4.It is alleged that the complainant issued legal notice dated 20.01.2009 calling upon the petitioner to pay the entire amount of Rs.56,500/- within fifteen days from the date of receipt of the notice. The said notice was duly received by the petitioner on 22.01.2009, but she did not respond to the notice. Thereafter, the present complaint has been filed by the complainant. The learned VIII Metropolitan Magistrate, George Town, Chennai, has taken the matter on file.

5.The contention of the petitioner is that as per the averments made in the complaint, the petitioner herein is only an authorised signatory and that therefore, she cannot be held liable. In this connection, he relied on the decision in N.GOPALAN vs. K.UDHAYAKUMAR [2009 (2) MWN (Cr.) DCC 78], wherein this Court has held that "the prosecution of a person who issued the cheque as authorised signatory from the account maintained by the other accused is not maintainable". However, in the case at hand, the first accused is a Private Limited Company, it is not a proprietary concern. Therefore, the said decision does not apply to the present case.

6.The learned counsel appearing for the petitioner would further submit that there is no averment in the complaint that the petitioner herein was responsible for the day-to-day affairs of the Company. He relied on the decision in K.K.AHUJA vs. V.K.VORA [(2009) 10 SCC 48], wherein the Hon'ble Supreme Court has held that an officer who was not in charge of and was responsible of the company for the conduct of the business of company can be made liable under Section 141(2) if necessary averments are made in the complaint.

7.A careful reading of the complaint would reveal that there is an averment in the complaint to the effect that the petitioner is the authorised signatory of the first accused, namely, M/s.Pearl Packaging (P) Ltd. Therefore, it cannot be said that there is no averment in the complaint as against the petitioner. The Hon'ble Supreme Court has held that "In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence." In the light of the dictum laid down by the Hon'ble Supreme Court, it

cannot be said the complaint does not disclose commission of an offence.

8. In HMT WATCHES LTD. vs. M.A.ABIDA [(2015) 11 SCC 776], the Hon'ble Supreme Court has held that the defence of the accused cannot be considered for exercise of inherent powers and such powers need to be exercised cautiously. In the instant case, it is informed that the trial has commenced and it is in the advanced stage and complainant's evidence has already been completed. Therefore, it would not be appropriate to grant the prayer of the petitioner at this stage. Whatever ground that has been taken by the petitioner could well be agitated before the Trial Court.

9. For the reasons stated above, this Criminal Original Petition deserves to be dismissed and accordingly, it is dismissed. Consequently, connected Miscellaneous Petition is closed. The outcome of the petition shall not have any bearing on a decision to be taken by the learned VIII Metropolitan Magistrate, George Town, Chennai, after completion of trial.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sri

To

1. The VIII Metropolitan Magistrate, George Town, Chennai.
2. -do- through Chief Metropolitan Magistrate, Chennai.
3. The Public Prosecutor,
High Court, Madras.

sk(co)
ss/9/1/2017

CrI.O.P. No.14689 of 2010