

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.1373 of 2012

and M.P.No.1 of 2012

Amudha Meenakshi

... Petitioner/3rd Accused

Vs.

N.K.Sengaliappan

... Respondent

Prayer:-Criminal Original Petition is filed under Section 482 Cr.P.C., to call for records pertaining to the complaint in S.T.C.No.992 of 2011 pending on the file of the learned Judicial Magistrate No.I, Coimbatore and quash the same as against the third accused/petitioner.

For Petitioner :Mr.J.Franklin

For Respondent :Mr.V.Nicholas

ORDER

This petition is filed for quashing the proceedings in S.T.C.No.992 of 2011 pending on the file of the learned Judicial Magistrate No.I, Coimbatore.

2.Learned counsel for the petitioner/A3 submits that the petitioner has been arrayed as third accused in S.T.C.No.992 of 2011 for the offence punishable under Section 138 of Negotiable Instruments Act (hereinafter called as "the Act"). He has pointed out the following two grounds for quashing the proceedings:

(i) Even though the petitioner herein is one of the Directors of M/S.Meenakshi Shelters (India) Private Limited/A1, no notice was served on her under Section 138(b) of the Act. Hence, non issuance of notice is fatal to the case of the respondent/complainant;

(ii) Even though the petitioner is one of the Directors of the said firm and she has not taken active part in the

business, there is no specific averment made against her. In the prayer coloumn of the complaint itself, it was specifically stated that the accused 1 and 2 are liable to be punished under Section 138 of the Act.

To substantiate his arguments, he relied upon the decision of the Honourable Apex Court reported in (2014) 16 SCC (Pooja Ravinder Devidasani v. State of Maharashtra and another). Thus, he prays for quashing the proceedings.

3.Learned counsel for the respondent/complainant submits that after receipt of notice, A2 sent a reply stating that the said firm has been run by the petitioner/A3. Further, it was stated that all the business transactions of the said firm are very well known by the petitioner/A3. It clearly shows that the petitioner is aware of the fact that the cheques have been issued only for discharging legally enforceable debt. Hence, he prays for dismissal.

4.Considered the rival submissions made on both sides and perused the typed set of papers.

5.The respondent herein as a complainant filed a private complaint against three accused for the offences under Sections 138 and 142 of the Act stating that the second accused had started a company by name M/S.Meenakshi Shelters (India) Pvt. Ltd./A1. The second accused and his daughter, who is A3/petitioner herein, are the Directors of the said firm. The firm is also doing construction of apartments. During February 2008, the second accused had approached the complainant and requested him to part with the money for the improvement of the firm. Being a partner and good friend, the complainant/respondent has parted with Rs.40 lakhs to the first accused and having trust and confidence, reposed on him that he would return the money within a year as requested by him. But the accused had not repaid the amount. Therefore, the respondent demanded the same and the accused issued four cheques. When the cheques were presented for encashment, they were returned as "insufficient funds". So the respondent/complainant, after issuance of statutory notice, preferred the complaint under Section 138 of the Act.

6.The first limb of argument advanced by the learned counsel for the petitioner is that non issuance of statutory notice to the petitioner/A3 is fatal to the case of the complainant. As per Section 138 of the Act, to constitute an offence under Section 138 of the Act, notice must be sent under Section 138(b) of the Act.

7.A perusal of the typed set of papers reveals that there is no iota of evidence to show that the statutory notice under Section 138(b) of the Act has been issued to the petitioner/A3. So non issuance of notice is fatal to the case of the respondent and on the sole ground itself, the complaint has to be quashed against the petitioner/A3.

8.The second limb of argument advanced by the learned counsel for the petitioner is that the first accused is the firm, second accused is the Managing Director and the third accused, the daughter of the second accused is one of the Directors of A1. According to the petitioner, in the complaint, no specific averment has been made against her.

9.At this juncture, learned counsel for the respondent submits that in the reply notice sent by the second accused, it was specifically mentioned that entire business transaction has been maintained only by the petitioner/A3.

10.A perusal of the complaint reveals that no specific averment has been made against the petitioner/A3. In the complaint, the respondent has made allegations against A1 and A2 alone. So it is appropriate to extract para-11 of the prayer column in the complaint, which is as follows:

"11.The accused had issued the above cheque with an intention to cheat and defraud the complainant having known the fact that there is no sufficient funds to honour the cheque hence accused 1 and 2 are liable to be punished under Section 138 of N.I.Act. The banker of the accused SBI, Thudiyalur falls within the jurisdiction of Thudiyalur police station. Hence, the complaint to file before this Hon'ble Court."

11.Now it is appropriate to consider the decision relied upon by the learned counsel for the petitioner reported in (2014) 16 SCC (Pooja Ravinder Devidasani v. State of Maharashtra and another), in para-16, it is held as follows:

"16.Before delving into the merits of the case, it would be apt to take note of relevant portions of the complaints filed by Respondent No. 2 which read thus:

"I say that the accused No. 2 to 5 on behalf of accused No. 1 have approached us with request for trade finance facility and accordingly the said facility has been granted by us to the accused as per their request and requirement.

I say that accused No. 1 is a private limited Company of which accused No. 2, 3 & 5 are Directors and accused No. 4 is the Director & authorized signatory of accused No. 1 M/S Elite International Pvt. Ltd.-Imprest. At all material time relevant and relating to the complaint, accused No. 2 to 5 were and are in charge of and responsible for the conduct of business of accused No. 1 and are also looking after day to day affairs of accused No.1. It is further submitted that accused No. 2 to 5 with accused No. 1 are liable to be prosecuted and / or connived in the commission of the present offence, in their capacity as a Director/signatory of the said private limited Company.

I say that as narrated in para 4 accused No. 2 to 5 being responsible for the affairs of accused No. 1 i.e. private limited Company are liable to be prosecuted for having committed a criminal offence in the event of failure on their part to comply with the requisitions contained in the statutory notice dated 03-11-2008, which was sent to them both under R.P.A.D. & U.P.C. on 06/11/2008. I say that notice was received by all the accused on or about 08/11/2008 and notice sent through U.P.C. are deemed to have been served. However, accused have failed and neglected to make our payment under the above said dishonoured cheques". "

In the case on hand, no specific averment has been made against A3/petitioner in the complaint. Under such circumstances, the argument advanced by the learned counsel for the respondent that in the reply sent by A2, it was stated that A3 alone has maintained the day to day affairs of the Company and that she is aware of the fact that the cheques have been issued only for discharging legally enforceable debt, does not merit acceptance.

12.Considering the aforesaid facts and circumstances of the case, I am of the view, since no notice was served on the petitioner/A3 under Section 138(b) of the Act and no specific averment has been made against the petitioner/A3 in the complaint, it is a fit case for quashing the proceedings against the petitioner/A3. Accordingly, the Criminal Original petition

stands allowed and the proceedings in S.T.C.No.992 of 2011 pending on the file of the learned Judicial Magistrate No.I, Coimbatore, is hereby quashed only against this petitioner/A3. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

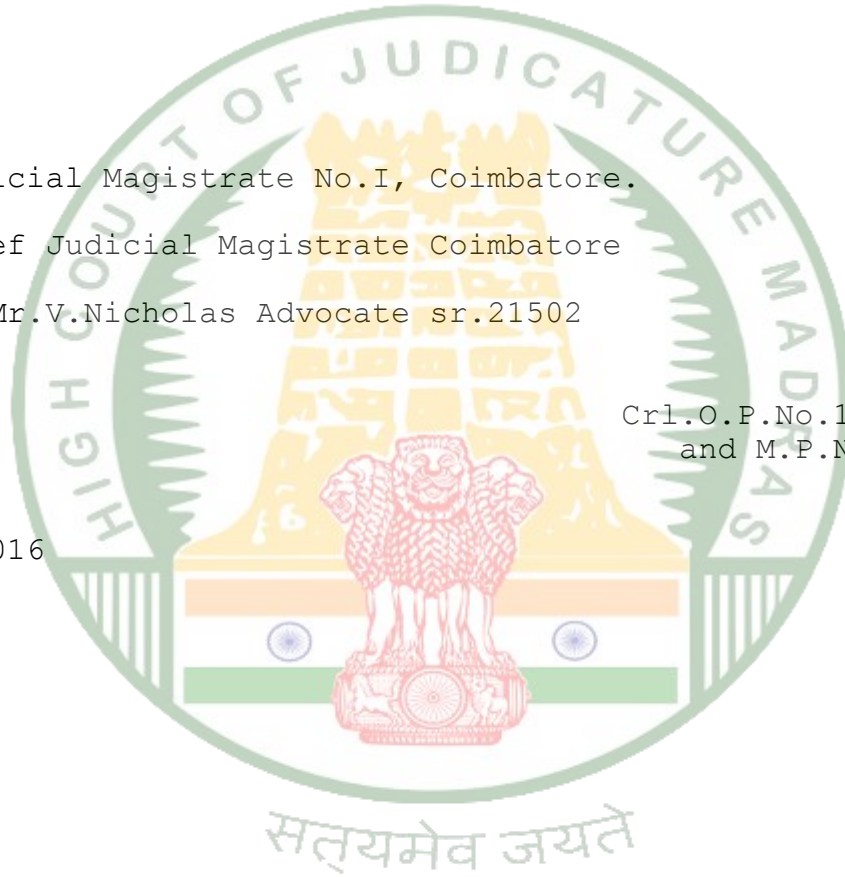
1.The Judicial Magistrate No.I, Coimbatore.

2.The Chief Judicial Magistrate Coimbatore

+1 cc to Mr.V.Nicholas Advocate sr.21502

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