

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2016

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Crl.O.P No.19350 of 2010

and M.P.No.1 of 2010

Kavitha

.. Petitioner

Vs.

Palanisamy

Respondent

Prayer : - Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and quash the complaint pertaining to the petitioner / A3 in C.C.No.108 of 2009 on the file of the Judicial Magistrate, Dharapuram.

For Petitioner : Mr.A.Sundaravadhanan
for Mr.B.Dyaneswaran

For Respondent : Mr.M.Guruprasad

ORDER

This Criminal Original Petition has been filed praying to call for the records in C.C.No.108 of 2009 on the file of the Judicial Magistrate, Dharapuram and quash the proceedings in respect of the petitioner / A3.

2. It is contented that the petitioner is only a partner in the firm, which issued the cheque and the petitioner / A3 was not incharge of the day-to-day affairs of the firm (Accused No.1) and even according to the complaint, A2 alone is incharge of the day-to-day affairs of the partnership firm and therefore, the proceedings in C.C.No.108 of 2009 is to be quashed as against the petitioner / A3.

3. The learned counsel appearing for the respondent vehemently contends that the petitioner / A3 is also an active partner of the firm and therefore, the case against him need not be quashed.

4. This Court perused the compliant. In paragraph 4 of the compliant, it has been clearly stated that A2 is incharge of the day-to-day affairs of the Accused No.1 firm and he is primarily liable for the consequences. In the complaint it has not been averred that the petitioner / A3 was incharge of the day-to-day affairs of the firm.

5. In S.M.S. Pharmaceuticals Ltd., v. Neeta Bhalla, reported in (2005) 8 SCC 89, the Hon'ble Supreme Court has held as follows :

"19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."

6. As per explanation given under Section 141 of the Negotiable Instruments Act, 1881, "company" means any body corporate and includes a firm or other association of individuals. Therefore, following the above ruling of the Hon'ble Supreme Court, the case against the petitioner / A3

herein is liable to be quashed and accordingly, the same is quashed.

In fine, this Criminal Original Petition is allowed and the C.C.No.108 of 2009 pending on the file of the Judicial Magistrate, Dharapuram as against the petitioner / A3 is quashed. The Judicial Magistrate, Dharapuram is directed to dispose the case in C.C.No.108 of 2009 within a period of four months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

tsvn

To

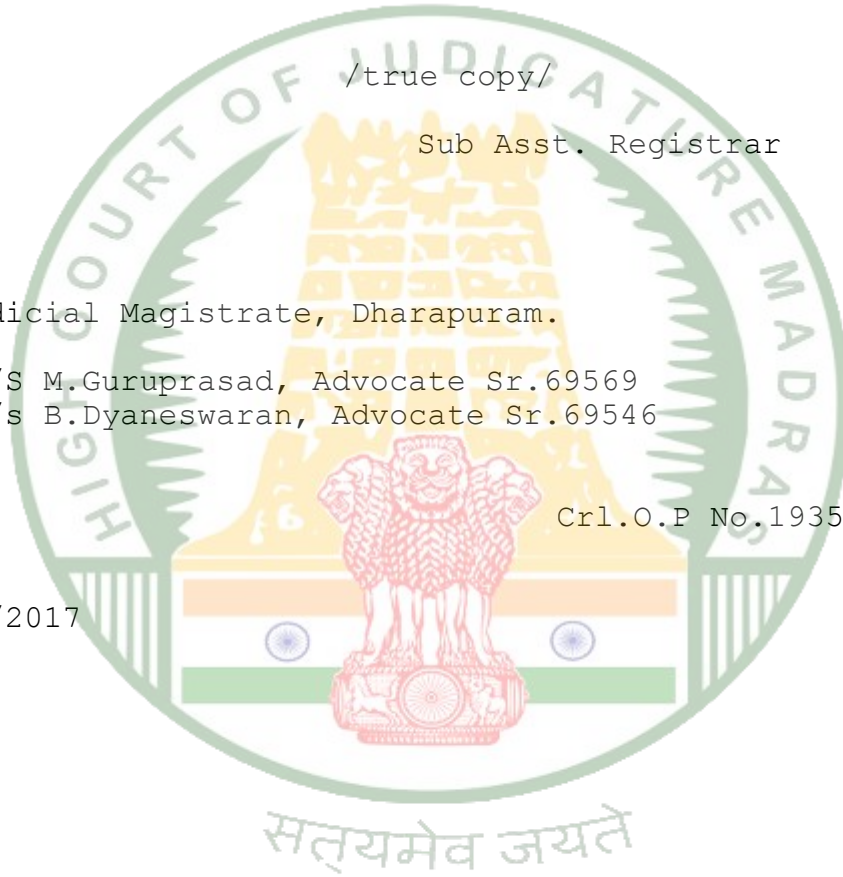
1. The Judicial Magistrate, Dharapuram.

+1cc to M/S M.Guruprasad, Advocate Sr.69569

+1cc to M/s B.Dyaneswaran, Advocate Sr.69546

Cr1.O.P No.19350 of 2010

GMI (CO)
RVR 03/01/2017



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