

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2017

(ORDERS RESERVED ON 18.07.2017)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.O.P.NO.25911 OF 2011

AND

M.P.NOS.1 AND 2 OF 2011

T.Kalaiselvi Petitioner/Accused

.. Vs ..

M/s.Ramco Industries Limited,
Represented by its Marketing Manager
and Power of Attorney,
Mr.Ananda Krishnan
'Auras Corporate Centre', Sixth Floor,
No.98-A, Dr.Radhakrishnan Road,
Chennai - 600 004. Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to quash the complaint in C.C.No.7986 of 2002, pending on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr.B.Natarajan
For Respondent : Mr.P.J.Rishikesh

ORDER

This criminal original petition is filed under Section 482 of Cr.P.C., to quash the complaint in C.C.No.7986 of 2002, pending on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai.

2. The brief facts, which are necessary for determination of the case, are as follows:-

(i) The first accused in C.C.No.7986 of 2002 is the petitioner herein. The respondent herein has filed a complaint in C.C.No.7986 of 2002 under Sections 138 and 142 of the Negotiable Instruments Act 1981 as amended by Act 66 of 1988 before the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, alleging that the petitioner herein is the Sole Proprietrix of M/s.Anantha Agencies and she is the first accused

in the complaint and her husband namely, Mr.P.S.A.Thamodharan is the second accused in the complaint. The said M/s.Anantha Agencies was appointed as stockist by the complainant company and the complainant company manufactured and delivered materials such as asbestos sheet to third parties nominated by the said stockist and after the third parties received the materials, the stockist would make payments by way of cheque to the complainant company. The complainant company manufactured and delivered materials to the tune of Rs.5,06,687.50 and for which, the husband of the petitioner herein had issued 4 cheques totaling a sum of Rs.5,06,687.50. The said cheques were dishonored on presentation and hence, the complainant issued legal notice calling upon the petitioner herein and her husband to pay the cheque amount, but they failed to pay the cheque amount and hence, the complaint. Even according to the complainant company, the petitioner herein is the Sole Proprietrix of M/s.Anantha Agencies and that the cheques were issued by the husband of the petitioner, who has no legal status in the petitioner's Sole Proprietrix Stockist Agency. Even though the liability towards the complainant may be that of the above petitioner's Sole Proprietrix Stockist Agency, the cheques were signed and issued in individual capacity by the husband of the petitioner, who has no legal status in the petitioner's Sole Proprietrix Stockist Agency. The above petitioner is not even a signatory to the cheques.

(ii) Petitioner has not committed any offences under Sections 138 and 142 of the Negotiable Instruments Act, since she did not sign the cheques and the said cheques were signed and issued by the husband of the petitioner in his individual capacity. The petitioner herein being only a Sole Proprietrix and not a company or partnership Firm cannot be roped into the complaint under Sections 138 and 142 of the Negotiable Instruments Act for the offences committed by her husband in his individual capacity.

3. Learned counsel appearing for the petitioner contended that as stated above, as the petitioner did not sign the cheques, she cannot be prosecuted for the offences under Sections 138 and 142 of the Negotiable Instruments Act.

4. Learned counsel appearing for the respondent herein could not resist the said contention, however, stated that the petitioner is the Sole Proprietrix of M/s.Anantha Agencies, for which, the respondent-M/s. Ramco Industries Limited have supplied Ramco brand Asbestos Cement Roofing Sheets and Accessories and based upon the books of accounts, accused Nos.1 and 2 are liable to pay the sale transaction of Rs.5,06,687.50. For the said amount, Mr.P.S.A.Thamodharan, who is the husband of the petitioner, had issued four cheques and on bouncing the same

and after issuance of statutory notice, complaint has been filed before the Court.

5. This Court has considered the rival submissions made by both the learned counsels and perused the records.

6. On perusal of papers, it is seen that Xerox copies of the dishonored cheques along with memo have been filed in the typed set of papers, which would go to show that cheques have been issued and signed by the second accused/Mr.P.S.A.Thamodharan in his individual capacity. Though the respondent has legally enforceable liability against the present petitioner herein, however, the cheques were not issued by her in her capacity as Proprietrix of M/s.Anantha Agencies and that the cheques being issued by the second accused/Mr.P.S.A.Thamodharan in his personal capacity, the case in C.C.No.7986 of 2002 against the present petitioner cannot be allowed to continue as the same is against the provisions of law and hence, the proceedings in C.C.No.7986 of 2002 have to be quashed only in respect of the petitioner herein/A.1.

7. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.7986 of 2002 pending on the file of the learned XVIII Metro Magistrate, Saidapet, Chennai, is quashed, in respect of the petitioner herein/A.1. It is open to the respondent to take steps in accordance with law in respect of legally enforceable debt if any, if he is so advised. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Jrl
To

1. XVIII Metropolitan Magistrate,
Saidapet, Chennai.
2. -do- Thro The Chief Metropolitan Magistrate,
Egmore, Chennai.

+1cc to Mr.P.J.Rishikesh, Advocate, S.R.No.53771

CrI.O.P.No.25911 of 2011

RJ(CO)
CS/18/08/17