

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Reserved on : 08.08.2017)

(Pronounced on : 29.11.2017)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.O.P.No.18584 of 2014

and

M.P.No.1 of 2014

S.Neela Subramanian ... Petitioner/Accused

... Vs ...

M/s. Meenakshi Leathers,  
Rep. by its Manager,  
Meenakshi Palaniappan  
No.66, Old No.40/1,  
Wuthu Cotton Street,  
Periamet,  
Chennai - 600 003.

... Respondent/De facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in C.C.No.1218 of 2012 on the file of the Chief Metropolitan Magistrate, Fast Track Court - I, Egmore, Chennai and to quash the entire proceedings.

For Petitioner : Mr.D.Senthilkumar

For Respondent : Mr.A.K.Gopalan

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सत्यमेव जयते  
ORDER

This criminal original petition is filed under Section 482 of Cr.P.C., to quash the proceedings in C.C.No.1218 of 2012 pending on the file of the learned Chief Metropolitan Magistrate, Fast Track Court No.I, Egmore, Chennai.

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

The respondent herein/de facto complainant is carrying on leather business at No.66 (Old No.40/1) Wuthu Cotton Street, Periamet, Chennai. The petitioner/accused is also carrying on leather business at No.10, Veperiy High Road, Periamet, Chennai.

The petitioner used to purchase material and pay for them and similarly, the respondent used to pay consideration and receive material. Accordingly, at the request of the petitioner, the respondent has paid a sum of Rs.75,000/- on 05.05.2010 bearing Cheque No.33705 drawn on Punjab National Bank, Periamet Branch, Chennai; a sum of Rs.25,000/- on 07.05.2010 bearing Cheque No.33708 drawn on Punjab National Bank, Periamet Branch, Chennai; a sum of Rs.2,00,000/- on 07.10.2010 bearing Cheque No.624624 drawn on Punjab National Bank, Periamet Branch, Chennai and a sum of Rs.50,000/- on 26.11.2010 bearing Cheque No.624691 drawn on Punjab National Bank, Periamet Branch, Chennai, for the purchase of materials and the respondent has also supplied material on 25.03.2011 under Invoice No.067 for Rs.5,31,270/- and the petitioner agreed to pay a sum of Rs.5,31,270/- to the respondent towards the material supplied by the respondent.

[ii] In the complaint, it is further averred that the respondent has paid a sum of Rs.3,50,000/- as hand loan. The petitioner expressed to undertake that she will repay the same within a period of two months. The petitioner has approached the respondent and requested enlargement of time to pay the sum of Rs.5,31,270/- towards the material supplied as well as the hand loan amount. Accordingly, the petitioner is liable to pay a total sum of Rs.8,81,270/- towards the material supply and hand loan. On repeated requests, the petitioner had issued a cheque bearing No.585268, dated 30.05.2011 for a sum of Rs.8,81,270/- drawn on Canara Bank at CBS Branch, Park Town, Chennai, in favour of the respondent towards discharge of the said business due as well as the loan amount and the petitioner requested the respondent to present the said cheque in the month of June 2011. The respondent presented the said cheque for collection through his banker viz., Punjab National Bank, Periamet Branch, Chennai, on 10.06.2011 and the said cheque was returned as unpaid due to insufficiency of funds in the account of the accused in his bank with a memorandum containing endorsement "insufficiency of funds". The petitioner requested the respondent to present the above dishonoured cheque once again in the third week of July 2011. Again, when the said cheque was re-presented for third time during third week of November 2011, it was returned along with the endorsement of "insufficient of funds" on 22.11.2011. Thereafter, the respondent had sent a legal notice dated 07.12.2011 and it was received by the petitioner on 10.12.2011. Thereafter, on 20.01.2012 the respondent has filed a complaint before the learned Metropolitan Magistrate No.II, Egmore, Chennai, under Section 138 of the Negotiable Instruments Act. Hence, this quash petition.

[iii] While the case of the petitioner herein, is, that the

cheque was not issued in the capacity as an individual-Neela Subramanian, the cheque was issued for and on behalf of M/s.Mangal Leathers Private Ltd., and as Director in the official capacity only. Besides, no statutory notice was sent to M/s.Mangal Leathers Private Ltd., company, since the same is separate legal entity.

3. Learned counsel appearing for the petitioner/accused submitted that the alleged statutory notice was issued to the petitioner herein in her individual capacity and in the absence of the company being made as a party to the private complaint, she is not vicariously liable to pay the cheque amount and hence, she seeks to quash the private complaint.

4. Per contra, learned counsel appearing for the respondent/de facto complainant submitted that the petitioner herein is the signatory and also Director of M/s.Mangal Leathers Private Limited company and hence, she is liable.

5. This Court has considered the submissions made by the learned counsel on either side and also perused the records.

6. On a perusal of records filed by both sides, it is seen that the cheque in question viz., cheque bearing No.585268, dated 30.05.2011 for a sum of Rs.8,81,270/- was issued in favour of the respondent herein/de facto complainant viz., M/s. Meenakshi Leathers. It is seen from the copy of the cheque that two Directors have to sign the cheque, however, only one Director appears to have signed. Further, on a perusal of the private complaint in C.C.No.1218 of 2012, it is seen that one Mrs.S.Neela Subramanian, W/o. R.Subramanian, Director of M/s.Mangal Leathers Private Ltd Company has been arrayed as sole accused. It remains to be stated that under Section 141 of the Negotiable Instruments Act, the private limited company on whose behalf the cheque has been issued has to be made as a party so as to fasten the responsibility upon its Directors. Admittedly, the cheque has been issued for and on behalf of M/s.Mangal Leathers Private Limited company in favour of M/s.Meenakshi Leathers, and the said M/s.Mangal Leathers Private Limited company was not arrayed as party accused in the private complaint and hence, in the absence of arraying the private limited company as a party accused in the private complaint, one of the Directors cannot be prosecuted in her individual capacity though she may be a Director of the said company.

7. The another point that has been raised by the learned counsel for the petitioner is that the cheque itself is defective for want of signature of one of the Directors. From the written memo given by the bank, it is seen that the cheque has been returned for want of sufficient funds but not otherwise



and hence, I am not proposed to deal with the issue. The other contention of the learned counsel for the petitioner is that notice was issued only to the petitioner herein in her personal capacity not as a Director of M/s.Mangal Leathers Private Limited Company. Learned counsel appearing for the respondent is not in a position to countenance the said contention.

8. In view of the discussion in the above paragraphs, I find that the private complaint having been instituted against the present petitioner in her individual capacity showing her as Director of M/s.Mangal Leathers Private Limited company without the private limited company viz., M/s.Mangal Leathers on whose behalf the cheque has been issued, the private complaint, as instituted, cannot stand for want of legal sanction and in view of the mandatory requirement as contemplated under Section 141 of the Negotiable Instruments Act, private complaint for the alleged offence under Section 138 of the Negotiable Instruments Act in respect of cheque issued on behalf of the private limited company that private limited company has to be arrayed as a party accused. In the absence of the private limited company as a party accused, one of the Directors, as alone and solely, cannot be proceeded in her individual capacity and in this view of the matter, this Criminal Original Petition is liable to be allowed.

9. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.1218 of 2012 pending on the file of the Chief Metropolitan Magistrate, Fast Track Court - I, Egmore, Chennai, is quashed. The connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CCC)

//True Copy//

सत्यमेव जयते  
Sub Assistant Registrar

Jrl  
To

The Chief Metropolitan Magistrate,  
Fast Track Court - I, Egmore, Chennai.

+2cc to Mr.A.K.GOPALAN Advocate, S.R.No. 84693

Order in  
Crl.O.P.No.18584 of 2014

SSD(CO)  
TR(27/12/2017)