IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.24068 of 2010
and
M.P.No.1 of 2010

R.Mala ... Petitioner

vs.

B.Vignesh ... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the proceedings in S.T.C.No.19 of 2008, on the file of the leaned Judicial Magistrate, No.I, Coimbatore and quash the same.

For Petitioners : Mr.J.Franklin

For Respondents : Mr.B.Nedunchezhiyan

JUDGMENT

The petitioner has filed this Criminal Original Petition praying to quash the complaint in STC No.19 of 2008, pending against her, on the file of the learned Judicial Magistrate No.I, Coimbatore.

2.The petitioner by invoking inherent powers of this Court under Section 482 Cr.P.C. seek to quash the proceedings pending against her in STC.No.19 of 2008 on the file of the Judicial Magistrate No.I, Coimbatore.

3.According to the petitioner, earlier she served as one of the directors of a company namely M/s.Angel Systems India Private Limited. While so, due to personal reasons, on 08.10.2006 she resigned from the directorship of the company and thereupon the resignation was accepted by the Board of Directors of Company in its meeting held on 08.10.2006. Thus she relieved from the said post on 08.01.2010 itself, whereby one Mrs.Vijayalakshmi, one another director was authorized by the Board of Directors to file Form 32 before the Registrar of Companies, informing the resignation of the petitioner herein. Accordingly petitioner's resignation was informed to the Registrar of Companies on 08.01.2006.

4.Being so, after about 2 years i.e. in the year 2008 as consequence of dishonor of a cheque issued by M/s.Angel Systems India Pvt. Ltd company, the above complaint in STC.No.19 of 2008 under Section of 200 Cr.P.C. r/w 138, 141 and 142 of NI Act, 1981 came to be filed by the respondent/complainant by arraying the petitioner herein as 3rd accused. In the above complaint, the company was arrayed as 1st accused and the director namely Vijayalakshmi, who issued the subject cheque was arrayed as the 2nd accused. The respondent without knowing the fact that the petitioner got relieved from the company as early in the year 2006, has lodged the above complaint by arraying the petitioner herein as the 3rd accused. Hence the above complaint is unsustainable in so far as the petitioner is concerned and the same if allowed to be proceeded will be nothing but an abuse of process of law and Court as well. Therefore the petitioner is before this Court seeking to quash the complaint in STC.No.19 of 2008 in so far as the petitioner is concerned.

5.I heard Mr.J.Franklin, learned counsel appearing for the petitioner and Mr.B.Nedunchezhiyan, learned counsel appearing for the respondent and perused the entire records.

6.The learned counsel for the petitioner would submit that the above complaint is untenable as against the petitioner, since the petitioner herein was not at all the director of the company at the relevant point of time i.e. on 04.06.2007. According to the respondent/complainant an amount of Rs.5,00,000/- was borrowed by the 1st accused company on 04.06.2007 at Coimbatore, for which the subject cheque bearing No.011327 drawn on the Jammu and Kashmir Bank Limited, was issued on 20.06.2007 to the complainant/respondent by the 2nd accused

Vijayalakshmi, on her official capacity as the director of the 1st accused company. It is the further case of the respondent that the subject cheque when presented by him on 27.06.2007 was dishonored for want of sufficient funds.

7.Thus the complaint discloses that the entire alleged occurrence is said to have been taken place in the year 2007, which is much after about 1 year from the date of resignation of the petitioner in the year 2006. Therefore, in any event the alleged act of the company cannot be attributed towards the petitioner. Further the petitioner being relived long back from directorship cannot be roped for an alleged occurrence said to have been taken place when she is not the director and signatory of the cheque. Therefore the complaint against the petitioner is an abuse of process of law and the same is liable to be quashed.

8.Per contra, the learned counsel for the respondent would submit that the contention of the petitioner that she was not a director at the crucial time of alleged issuance of cheque is a matter to be appreciated on trial. Moreover the 2nd and 3rd accused are sisters served as directors of the company and hence the above complaint was rightly lodged against them for defrauding the complainant by not paying the borrowed amount of Rs.5,00,000/-.

9.Hearing upon the rival submissions and on careful perusal of the records, this Court is able to see that the petitioner and the 2nd accused namely Mrs.Vijayalakshmi has acted as a director of the 1st accused company. Further, it is noticeable that the petitioner has resigned her post of Director and thereby relived from the company on 08.10.2006. The above fact is ascertained by this Court on perusal of the certified copy of Form-32 dated 08.10.2006 of the 1st accused company, issued by the Registrar of Companies, Coimbatore, under provisions of the Companies Act, 1956.

10.From Form No.32 of M/s.Angel Systems India Private Limited Company annexed in page No.8 of the typed set of papers issued by the Registrar of Companies Coimbatore, containing the particulars of incoming or outgoing directors reveal that the petitioner has resigned her directorship as earlier as on 08.10.2006. Further it is noticed that the resignation letter of the petitioner was accepted by the company and a resolution to that effect was passed by the Board of Directors vide Resolution No.1 dated 08.10.2006, whereby accepting the resignation of the petitioner with effect from 08.10.2006.

11.Yet another resolution in Resolution No.2 dated 08.10.2006 is also being passed by board of directors authorizing the 2nd accused namely Mrs.Vijayalakshmi to sign all documents and certificates on behalf of the company. The above documents precisely demonstrate that the petitioner has resigned the post of directorship of the company on 08.10.2006 and the same was submitted before the Registrar of Companies.

12.At this juncture on perusal of the complaint on hand, it is seen that it is the case of the respondent that the 1st respondent company has borrowed an amount of Rs.5,00,000/- on 04.06.2007, for which the 2nd accused on her official capacity issued the subject cheque on 26.06.2007. The cheque when presented before the bank was returned unpaid due to insufficient fund, resulting in lodging of the above Private Complaint by the respondent.

13.Therefore it is obvious for this Court to see that the alleged occurrence is said to have taken place in the year 2007, much after the resignation of the petitioner made in the year 2006. Therefore in the light of the above facts, I am of the considered opinion that the petitioner herein cannot be held liable or attributed with any of the acts committed by the 1st accused company or for that of serving directors.

14.In view of the foregoing reasons, this Criminal Original Petition succeeds and hence the complaint in STC.No.19 of 2008, on the file of the learned Judicial Magistrate No.I, Coimbatore, is hereby quashed in so far as the petitioner is concerned. Consequently, connected miscellaneous petition is closed.

04.10.2017

vs

Speaking order
Index : Yes

To

The Judicial Magistrate No.I,
Coimbatore.

M.V.MURALIDARAN,J.

vs

Pre-Delivery Judgment in Crl.O.P No.24068 of 2010 and M.P.No.1 of 2010

04.10.2017