

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P Nos.28727 to 28732 of 2009
and

M.P.Nos.1 to 1 & 2 to 2 of 2009 (12 MPs)

Anu Menda .. Petitioner in all the Crl.O.Ps
Director,
M/s.Presidium Constructions Coimbatore (P) Ltd.,
Siema Buildings (Near Thomas park),
8/4, Race Course Road,
Coimbatore - 641 018.

vs.

S.Rajalakshmi
Proprietor,
M/s.Shri Thillai Enterprises,
Having her office at
No.3/75, 1st Cross,
New Fairlands,
Salem - 636 016. .. Respondent in Crl.OP.28727/09

R.Srinivasan
Proprietor,
M/s.Sivagami Textiles,
Having his office at
No.120, Fort Main Road (Upstairs),
Shevapet,
Salem - 636 002. .. Respondent in Crl.OP.28728
and 28729 of 2009

R.B.Mohanavelu
Proprietor,
M/s.Mohan's Corporation,
Having his office at
No.118, Greenways Road,
Fairlands,
Salem - 636 016. .. Respondent in Crl.OP.28730/09

S.Madhan
Proprietor,
M/s.Madhan Traders,
Having his office at

No.120, Fort Main Road (Upstairs),
Shevapet,
Salem - 636 002.

.. Respondent in Crl.OP.28731/09

Sushil R.Bhatia

.. Respondent in Crl.OP.28732/09

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to quash the proceedings in S.T.C.Nos.701, 702, 703, 704, 705 & 676 of 2009, pending on the file of the Judicial Magistrate No.3, Salem.

(In all the Crl.OPs)

For Petitioners : Mr.Satish Parasaran

For Respondent : No Appearance

JUDGMENT

All these Criminal Original Petitions from Crl.O.P.Nos.28727 to 28732 of 2009 are being filed by the petitioner herein namely M/s.Anu Menda seeking to quash the private complaints in S.T.C.Nos.701, 702, 703, 704, 705 and 676 of 2009 on the file of the learned Judicial Magistrate No.3, Salem.

2.The sum and substance of the Criminal Original Petitions are as follows:

All the Summary Trial Cases stated supra came to be filed under section 200 Cr.P.C by the respective complainant as against the 1st accused company / 1st respondent in the complaint and four others including this petitioner arrayed as 5th respondent in the above complaints by claiming the petitioner herein and other accused to be the Director of M.S.Presidium Constructions Coimbatore (P) Ltd., 1st accused company.

3.The above complaints in S.T.C.Nos.701, 702, 703, 704, 705 and 676 of 2009 came to be filed in the factual backdrop of dishonor of several cheques issued by the said 1st accused company. Therefore the holders of dishonored cheques have filed those complaints for an offence punishable under section 138 of Negotiable Instruments Act as against the construction company and as well arraying the directors namely Suresh Menda, Rajkumar Menda, Divya Khemchand and these petitioners as accused Nos.1 to 5 respectively.

4.It is the case of the petitioner that the learned Magistrate without appreciating the fact that the above complaint does not satisfy the ingredients of Sections 138, 141,

and 142 of the Negotiable Instruments Act in as much as the petitioner, had taken the complaints on file.

5.It is petitioner's case that she was neither director of M/S.Presidium Constructions Coimbatore (P) Ltd., which had allegedly availed loan from the respondent herein, nor was in any manner in charge of or responsible for the affairs of M/S.Presidium Constructions Coimbatore (P) Ltd., at the relevant point of time. Accordingly by way of these CrI.O.P's she seek this Court to invoke the inherent powers of this court vested under section 482 of Cr.P.C to quash the above complaints as abuse of process of law.

6.I heard Mr.Satish Parasaran, learned counsel for the petitioner in all the criminal original petitions and perused the records. There is no representation on behalf of the respondents.

7.The learned counsel for the petitioner would submit that the petitioner was neither a director nor in-charge of any of the affairs of M/S.Presidium Constructions Coimbatore (P) Ltd., even when the respondent allegedly advanced the loan herein, or anytime thereafter, accordingly he pray to quash all these complaints in so far as herself alone.

8.On perusal of records it is seen that the petitioner was originally appointed as director of Presidium Construction Coimbatore (P) Ltd on 16.04.2004. It is further found that immediately after 4 days i.e 20.04.2004 she had resigned from the office.

9.It would be further relevant note here that the petitioner's sister namely Janaki Devi Menda was also appointed as director to the above company on the same date i.e 16.04.2004 and resigned on 20.04.2004 was not made a party to the above complaints.

10.The fact of resignation and change in composition of Board of directors in the year 2004 of Presidium Construction Coimbatore (P) Ltd is brought to notice of this court vide Form No.32 dated 21.04.2004 submitted under the Companies Act, 1956.

11.It is also seen that the above changes in composition of directors of the company is notified in line with Section 303(2) of Companies Act, 1956.

12.Coming to cases on hand, it is the case of respective complaint that all the subject cheques of the complaint were issued in the year of 2008 towards loan raised in that year i.e in 2008.

13.Thus it is obvious to see that entire transaction projected in the complaints said to have taken place in the year 2008 and subsequent to it. Therefore in my considered opinion the petitioner who had resigned even in the year of 2004 itself

cannot be held liable for transaction as well towards discharge of any loan or liability. More so, it is noticed by this Court that even the petitioner was found appointed as director and had held the post of the director only for 4 days i.e from 16.04.2004 to 20.04.2004. Therefore at any stretch of imagination the petitioner cannot be held liable for the above transaction or loan due.

14. Accordingly this court find that the complaints on hand in as much as the petitioner herein/accused No.5 is concern if allowed to be continue, the same will be nothing but on utter abuse of the process of law.

15. For the foregoing reasons, this Court is of the firm opinion that the case on hand is a fit case to exercise its power under Section 482 of Cr.P.C. to prevent the abuse of process of law and secure and end of Justice.

16. In the result, all the criminal original petitions are allowed and thus the complaints shall stand quashed in as much as the petitioner herein /5th accused alone is concerned.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

vs

To

The Judicial Magistrate No.3, Salem.

Crl.O.P Nos.28727 to 28732 of 2009
and

M.P.Nos.1 to 1 & 2 to 2 of 2009 (12 MPs)

GMV (08/11/2018)

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