IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2017

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.No.18802 of 2010 and
M.P.Nos.1 and 2 of 2010

M.Hanitha .. Petitioner/Accused

vs

S.Bhuvaneswari .. Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.4995 of 2009 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioner : Mr.V.Nandhakumar

For Respondent : Mr.N.A.Kareem

ORDER

This Criminal Original Petition has been filed by the petitioner to call for records in C.C.No.4995 of 2009 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai and quash the same.

2. The facts in a nutshell are as under: The respondent is the complainant, who filed the complaint alleging that the husband of the petitioner, M.Narendra Kumar, was one of the Directors of the company known under the name and style of "Unicorn Management Services (India) Pvt. Ltd.". The other directors of the said company are the respondent complainant and one R.Srinivasan, the husband of the respondent complainant.

3. It is the allegation in the complaint that the husband of the petitioner herein had misappropriated the funds of the company by misusing the trust and confidence and cheated the respondent complainant and her husband to the tune of Rs.50 lakhs. It is stated that the petitioner approached the respondent through common friends and offered to pay a sum of Rs.30 lakhs initially, pending verification of the accounts.

The complainant, therefore, issued two cheques one dated 10.6.2009 for Rs.15 lakhs and another cheque dated 10.7.2009 for Rs.15 lakhs.

4. It is the allegation in the complaint that when the cheque dated 10.6.2009 was presented for encashment on 7.7.2009, the same was returned stating that the account was closed. Thereafter, a notice dated 7.8.2009 was issued to the petitioner and the said notice remained unclaimed, necessitating the respondent to file a complaint under Section 138 of the Negotiable Instruments Act.

5. In such backdrop, the present criminal original petition is filed for the relief stated supra.

6. The learned counsel appearing on behalf of the petitioner accused vehemently contended that inasmuch as the complaint had been preferred not by the company, but by an individual without any reference to the company and without any authorization from the Board of Directors of the Company, the complaint is liable to be quashed. He added that the husband of the petitioner still continues to be the Director of the company and the respondent complainant had not filed any document to show that she had been authorized to prefer the complaint.

7. It is further contended that the cheques were obtained by the respondent complainant from the petitioner stating that the same was liable to be given as collateral security to Sri Visalam Chit Funds Ltd., Chennai, and the respondent/complainant had tampered with the cheques and falsely preferred the complaint as against the petitioner accused.

8. The learned counsel for the respondent justified the issuance of summons to the petitioner accused and contended that all the contentions raised in this petition can be proved at the time of trial and the present petition is liable to be dismissed.

9. I heard Mr.V.Nandhakumar, learned counsel for the petitioner and Mr.N.A.Kareem, learned counsel for the respondent and perused the documents available on record.

10. In the present case, it is not in dispute that the respondent complainant, her husband and the husband of the petitioner were Directors of the Company, viz., Unicorn Management Services (India) Pvt. Ltd. The allegation in the complaint is that the husband of the petitioner accused, being the Director of the said company, had misappropriated the sum to the tune of Rs.50 Lakhs.

11. In the case on hand, admittedly, the cheques had not been given by the husband of the petitioner, but by the petitioner in her individual capacity. The plea of the petitioner that the said cheques were given as a collateral security and the same had been tampered with by the respondent complainant, necessarily has to be proved by the petitioner accused by adducing evidence at the time of trial. If the husband of the petitioner is the Director, why the petitioner should sign the cheques and furnish collateral security as stated by the petitioner, is also a question which should be provided during trial.

12. This Court in exercise of the jurisdiction under Section 482 of the Code of Criminal Procedure cannot meticulously examine the entire factual aspect as has been advanced by the petitioner accused and thereafter come to a logical conclusion with regard to the claim of the present petitioner that such cheques were issued as collateral security. It is well settled principle of law that while exercising jurisdiction under Section 482 of the Code of Criminal Procedure, the Courts should not indulge in meticulous examination of the factual aspect thereby usurping the jurisdiction of the learned Magistrate to decide the actual state of affairs.

13. For the foregoing reasons, this Court finds no justified reason to interfere with the proceedings in C.C.No.4995 of 2009 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai, and, accordingly, this criminal original petition is dismissed with the following directions:

(i) the petitioner accused is granted permission to raise all the grounds raised in this criminal original petition before the learned VII Metropolitan Magistrate, George Town, Chennai, in C.C.No.4995 of 2009;

(ii) The learned VII Metropolitan Magistrate, George Town, Chennai, is directed to take up C.C.No.4995 of 2009 on day to day basis without giving any adjournment to either party and dispose the said complaint without being influenced by any observations made in this order, within a period of three months from the date of receipt of a copy of this order. Both the parties are directed to extend their fullest cooperation for early disposal of the complaint; and

(iii) The learned VII Metropolitan Magistrate, George Town, Chennai, is directed to send a copy of the order passed in C.C.No.4995 of 2009 to this Court within ten days of passing such order/judgment.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

The VII Metropolitan Magistrate,
George Town, Chennai.

+1cc to Mr.N.A.Kareem, Advocate SR.NO.76401

VBA(CO)
sm:24.10.2018

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