

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.Nos. 5467 and 5468 of 2014
and Cr.MP. Nos. 1,2 of 2014 and 1, 2 of 2014 and 1 of 2015

R.Thanganayaki

.. Petitioner
in both Crl.OPs

Vs.

1.M/s.Interfab Designss,
A Partnership Firm
having its place of business at
No.9, 30 Feet Road, Perichipalayam North,
Dharapuram Road,
Tiruppur-641608
represented by their authorised person
and parter
T.Kesavan

2.M/s.Anushri Fashion India Private Limited,
represented by its Director,
Mr.R.Vetrivel
S/o.A.Ramasamy,
No.49, Kathiravan School Road,
KVR Nagar,
Tiruppur-641604

3.Mr.R.Vetrivel,
S/o. A. Ramasamy,
Director of M/s. Anushri Fashion India Private Limited
KVR Nagar,
Tiruppur-641604

..Respondents
in both Crl.OPs

PRAYER in Crl.OP. No. 5467 of 2014: Criminal Original Petition
filed under Section 482 Cr.P.C. praying to call for records in
C.C. No. 25 of 2014 on the file of the Judicial Magistrate
No.III, Tiruppur and quash the same.

PRAYER Crl.OP. No. 5468 of 2014: Criminal Original Petition
filed under Section 482 Cr.P.C. praying to call for records in
C.C. No.105 of 2014 on the file of the Judicial Magistrate
No.III, Tiruppur and quash the same.

For Petitioner : Mr.R.Dillikumar
(both Crl.OPs)

For Respondents : Mr.C.Prakasam
(in Crl.OP.No.5467 of 2014)
Mr.J.Fanklin
(in Crl.OP.No.5468 of 2014)

COMMON ORDER

The prayer in these petitions is to call for records in C.C. Nos.25 of 2014 and 105 of 2014 on the file of the Judicial Magistrate No.III, Tiruppur and quash the same.

2. The petitioner herein has been arrayed as third accused in the complaint filed under Section 138 of N.I Act preferred by the first respondent herein. The averments in the complaint, as against this petitioner to make her liable for the offences is that she was actively carrying out the day to day affairs of the first accused company and that she had interacted with the company and made assurance for payments.

3. While the first accused in the complaint is the company, the second accused is claimed to be the Managing Director of the first accused company. The cheque has been issued by the company and the second accused had signed the cheque on behalf of the first accused company. Section 141 of NI Act does not automatically make the Director of the company vicariously liable for the payment made on behalf of the company. The necessity is that there must be sufficient averments in the complaint that such director was incharge and also responsible for the company and for the conduct of the business, with specific overt acts implicating the Director for the pre-existing liability on the impugned cheque.

4. On a reading of Section 141 N.I Act, it is seen that by a mere statement that he is incharge and responsible for the conduct of the company alone may not be sufficient to make the person libale. In order to bring the case under the purview of Section 141 N.I Act, the complaint must disclose sufficient facts, which makes director liable. In the instant case, apart from allegations that this petitioner was involved in the day to day affairs of the company and she is responsible to the company alone may not be sufficient to vicariously implicate the petitioner.

5. Under these circumstances, it may not be proper for the trial Court to proceed against this Petitioner. I am also unable to comprehend as to how, in the absence of specific averments implicating the petitioner with the liability, the trial Court can reach a logical conclusion as against this petitioner.

6. In the result, the proceedings in C.C. No.25 of 2014 and C.C. No. 105 of 2014 on the file of the learned Judicial Magistrate No.II, Tiruppur, insofar as it relates to the petitioner herein/ 3rd accused is quashed. It is made clear that the trial Court is at liberty to proceed as against the first and second accused. Since the cases have been pending from the year 2014, the trial Court shall endeavour to complete the proceedings as expeditiously as possible.

With the above observations and directions, these Criminal Original Petitions are allowed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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+2 ccs to M/s.K.Mayilsamy Advocate sr 11260 & 11261

+1 cc to M/s.C.Prakasam Advocate sr 11150

+1 cc to M/s.J.Franklin Advocate sr 11495

सत्यमेव जयते
Crl.O.P.Nos. 5467 and 5468 of 2014
and Cr.MP. Nos. 1,2 of 2014
and 1, 2 of 2014 and 1 of 2015

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