

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.19255 of 2011

E.Renugadevi

.. Petitioner

Vs

1. M/s.Charms fashion
represented by its partner,
P.Balasubramaniam,
NO.46, Angeripalayam Road,
Gandhi Nagar Post,
Tiruppur-641 603.
2. M/s.Tittanic Designer,
Represented by its partner P.K.Selvaraj
3. P.K.Selvaraj
4. K.G.Rajasekar
5. P.Gopalakrishnan ..Respondents

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in S.T.C.No.299/2011 on the file of Judicial Magistrate Court No.1, Tiruppur and quash the same.

For Petitioner : Mr.R.Rajarajan
For R1 : Mr.S.N.Arunkumar
For R2 to R5 : No appearance

O R D E R

The petitioner herein has been arrayed as accused No.5 in STC.No.299/2011 which is pending on the file of Judicial Magistrate Court No.1, Tiruppur.

2. The contention of the petitioner is that the 1st respondent had filed a case against the petitioner and respondents 2 to 5 herein who had been arrayed accused 2 to 5. The petitioner firm is involved in the business of computerised embroidery and flock printing and the 1st respondent's main business is to take job orders in embroidery. As such there has been business transactions between the petitioner and the respondents.

3. During the course of the business, the petitioner's A1 firm, in discharge of the old outstandings, issued two cheques which got dishonoured. Hence, 1st respondent filed a criminal complaint under Sections 138 & 142 of the Negotiable

Instruments Act r/w 200 of Cr.P.C. which is pending before the learned Judicial Magistrate, Tiruppur.

4. The contention of the petitioner is that there is no specific allegation regarding the manner in which petitioner was responsible for the conduct of the business, except is the vague allegation against the partners. Further, the petitioner is not signatory to the cheque and she is not involved in the day today affairs of the firm. Hence, in the complaint also there is no specific averment as against the petitioner role in the business and the dealings with the respondent. Hence she filed a above petition to quash the Criminal complaint pending against her.

5. Accepting the Complainant's contention that A3 is the partner of the A1 firm and the petitioner cannot be made as an Accused in the above case, the decision reported in the cases of S.M.S. Pharmaceuticals Ltd., Vs Neeta Bhalla & another, 2007 (2) CTC 86 and K.K.Ahuja Vs. V.K.Vora and another (2009) 10 Supreme Court Cases 48 are relied upon.

6. On the contrary, the learned counsel for the 1st respondent oppose the said contentions and stated that the petitioner being the partner of the first accused firm is vicariously liable to the business transaction of the first accused firm. Further, the respondent submits there are averments with regard to the over tact of the petitioner.

7. On consideration of the rival submissions and on a perusal of materials available on record, it could be seen that it is the admitted case of the 1st respondent that 1st respondent has filed a complaint under Section 138 Negotiable Instruments Act against the petitioner and four others for dishonour of two cheques for sum of Rs.72,589/- a cheque bearing No.927487 dated 30.06.2010 signed by A2/P.K.Selvaraj, who is a partner of the first accused firm and another cheque bearing No.927488 dated 01.07.2010 for sum of Rs.1,01,818/- signed by A3/K.G.Rajasekar, who are one of the partners of the first accused firm. Both the cheques were drawn in favour of the 1st respondent. In discharge of the part liability towards the business transaction between them.

8. Further, it could be seen from the complaint that except in paragraph 2 where it has been mentioned that accused No.1 is a firm and accused No.2 to 5 are all partners of A1, making a bald averments, that they are responsible for the day today affairs and this petitioner/A5 is one of the accused other than this averment there is no other averment or material in the complaint to show that this accused had taken active and part in the day today affairs of the first accused firm to make her vicariously liable. The specific alligation by the petitioner is that she was never incharge or conduct of the business and day today affairs of the first accused firm and she is not the signatory to the cheques in question.

Further, taking qua from the observations of the Apex Court it is clear that for roping the partner of a firm under Section 142 of the Negotiable Instruments Act there must be sufficient averments to show that the person who sought to be proceedings against on the promise of he or she being vicariously liable for commission of the offence of the company.

9. Further, for making person liable to Section 141 (1) (2) will be of no assistance as far as this petitioner/A5.

10. In this complaint, there is no such averment to vicariously hold the petitioner is an accused in the above case. In view of the above, the petition is allowed and the case, as against the petitioner/A5 in S.T.C.No.299/2011 alone is quashed.

11. Since the S.T.C.No.299 of 2011 is of the year 2011 without any progress, the Trial Court is directed to complete the trial taking in view of the delay and the issue involved is only on a short compass trial to be completed within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

dss

To

1. The learned Judicial Magistrate Court No.1,
Tiruppur.
2. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.19255 of 2011

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EU(26/07/2018)

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