IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.04.2018
CORAM:
THE HON'BLE MR.JUSTICE R. HEMALATHA
Crl.O.P.No.20943 of 2011 and
M.P.No.1 of 2011

R. Sumathi ... Petitioner/Accused

/Vs/

Sri Balaji Yarns,
represented by its Partners,

1. S.Rahja Manickam
2. S.Jaya kumar

Having its place of business at:
No.44-B, Rakkiapalayam Road,
Ammapalayam, Anupurpalayam Post,
Avinashi Taluk, represented by it's office (i/c)
and Power of Attorney Agent S.Mani,
... Respondent/Complainant

PRAYER: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records in S.T.C.No.1286 of 2011 on the file of the Learned Judicial Magistrate No.I, Tirupur and to quash all further proceedings as against the petitioner herein.

For Petitioner/Accused : Mr.S.Baskar for M/s.Ram & Ram
For Respondent/Complainant : Mr.K.Govi Ganesan

O R D E R

The petitioner is the third accused in S.T.C. No.1286 of 2011 on the file of the Judicial Magistrate No.I, Thiruppur.

2. The respondent/complainant Sri Balaji Yarns, represented by its Partners, 1) S.Rahja Manickam and 2) S.Jaya kumar filed a criminal complaint before the Judicial Magistrate No.I, Thiruppur against the present accused as well as against one S.R.S.Knitting and one Mr.M.Ranganathan for an alleged offence punishable under section 138 of Negotiable Instrument Act, (in short "NIA Act") 1881.

3. The case of the respondent/complainant is that the first accused is the partnership firm engaged in the manufacturing of garments and the accused 2 and 3 are partners in the first accused firm. According to the respondent/complainant, both the accused 2 and 3 took active

part in the day to day activities of the firm and are also responsible persons for all the transactions of the first respondent firm. The respondent had regular business transaction with the accused and during the course of business a sum of Rs.11,68,180/- was due and payable by the accused for which, the accused issued two cheques bearing numbers 049551 and 099000 dated 08.11.2008 drawn on South Indian Bank Limited, Tiruppur Main Branch. When the said cheques were presented before the respondent bankers viz., State Bank of Mysore, Avinashi on 27.03.2009, the cheques were returned for the reason "insufficient funds" on 28.03.2009. Thereafter, the respondent issued a notice, dated 09.04.2009 to the accused, calling upon them to make good the payment due under the cheques. Since the said notice did not evoke any response from the accused, the respondent filed a complaint under section 138 of Negotiable Instrument Act, 1881, before the Judicial Magistrate No.I, Thiruppur.

4. Now, the present criminal original petition is filed by the third accused contending that she has nothing to do with the affairs of the first respondent's firm and that she did not take active part in the day to day affairs of the first respondent firm.

5. The learned counsel appearing for the petitioner relied on the following decisions.-

(i) [Rallis India Limited v. Poduru Vidya Bhusan and Others, reported in 2011 (4) Scale 614].

(ii) [Veeran and Others v. State of Madhya Pradesh reported in 2011 (4) Scale 618] and

(iii) [National Small Industries Corporation Ltd., v. Harmeet Singh Paintal and Another, reported in (2010) 3 SCC 330] and contended that it is very clear from section 141 of the Act that what is required is that the person who is sought to be made vicariously liable for a criminal offence under Section 141 should be, at the time of the commission of offence, in charge of, and responsible to the company for the conduct of the business of the company. He would further contend that every person connected with the company shall not fall within the ambit of the provision and only those persons who were in charge of and responsible for the conduct of the business of the company at the time of commission of an offence will be liable for criminal action.

6. Per contra the learned counsel appearing for the respondent would contend that as per section 141 of Negotiable Instrument Act, 1881, if every person who at the time of commission of offence was in charge of or responsible for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. He would further contend that the respondent/complainant in his complaint as well as in his sworn statement before the learned Judicial Magistrate

No.I, Thiruppur, has specifically stated that the accused 2 and 3 took active part in the day to day affairs of the first respondent company.

7. A perusal of the complaint shows that the accused 2 and 3 are shown as partners, in charge of and responsible for the conduct of the business of the company at the relevant point of time. There is a specific averment in this regard in the complaint. It cannot be stated as bald averments. In fact, the respondent had referred both the accused 2 and 3 as partners, who were in charge of the first respondent firm. Further, the petitioner (III accused) though received a notice dated 13.04.2009 did not issue any reply notice to the respondent/complainant denying her liability. It is not out of place to mention that according to the first respondent/complainant, the accused viz., S.R.S.Knitting Company (1st accused firm) had business transaction with the respondent/complainant and in the course of such business a sum of Rs.11,68,180/- was due and liable by the accused 1 to 3. When there are positive averments in the complaint as regards the role played by the petitioner herein, it cannot be held at this stage that the petitioner did not take active part in the day to day affairs of the company. However, it is always open to the petitioner to prove her innocence before the trial Court.

8. The proviso, under section 141 of the Act, clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence is committed without his knowledge or he had exercised due diligence to prevent the commission of such offence, he will not be liable for punishment.

9. Where there are allegations that the accused 2 and 3 are partners in the first accused firm, the question as to whether, the present petitioner was in charge of day to day affairs of the company can be decided only at the time of trial and I do not find any reason to quash the proceedings under Section 482 of Cr.P.C., especially, when there is a specific averment in the complaint that the present petitioner was in charge of the affairs of the company, on the date of the offence.

10. Accordingly, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

msm

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate - I,
Tirupur.

2. The Public Prosecutor
High Court of Madras,
Chennai.

+1cc to M/s.Ram & Ram, Advocate Sr.No.26982
+1cc to M/s.K.Govi Ganesan, Advocate Sr.No.26905

NRI(CO)
sm:2.5.2018

Crl.O.P.No.20943 of 2011