

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.14676 of 2010 and
M.P.Nos.1 and 2 of 2010

Suvarna Ramesh Belose

... Petitioner/3rd Accused
Vs.

M.Jagadeesan

...Respondent/Complainant

PRAYER: The Criminal Original Petition has been filed under Section 482 of Cr.P.C, to call for the records in respect of the complaint filed by the respondent herein in C.C.No.744/2009 on the file of Judicial Magistrate NO.II, Salem and quash the same as far as the petitioner is concerned.

For Petitioner : Mr.R.Nalliyappan

For Respondent : No appearance

O R D E R

The petitioner herein is the third accused in C.C.NO.744 of 2009 pending on the file of learned Judicial Magistrate II, Salem District.

2. The respondent herein had filed a private complaint under Section 138 of Negotiable Instrument Act, 1881 against the petitioner and four others, who are all from one family.

3. The contention of the petitioner is that she is not a signatory to the Cheques in issue and she being a lady, a house wife, except being sleeping partner in the family Partnership business, she does not take active part in the day to day affairs of the partnership Firm namely M/s.B.S.Roadlines, Mumbai. Except certain vague and bald allegations, there is no specific averments in the complaint as to the petitioner's role in the alleged loan transaction between the petitioner and the respondent. Hence the case against the petitioner has to be quashed.

4. Further, the learned counsel appearing for the petitioner relied upon two judgments reported in 2010 [11] SCC 203 [Central Bank of India vs. Asian Global Limited and others] and 2010 (2) MWN (cr.) DCC 14 [Kalidas, Director, Kaveri Engineering Industries Limited, Trichy-4 Vs. Industrial Reconstruction Bank of India (IRBI), by Authorised Official, G.Venkatakrisnan, Southern Zonal Office, Spencer Plaza, 7th Floor, 679, Anna Salai, Chennai-2.]

5. Despite several notices to the respondents, both through Court as well as privately, the respondent had failed to appear before this Court and despite, his name appeared to be printed in the cause list, there is no representation for the respondent.

6. Taking into consideration the fact that the case before the Trial Court has been kept pending from the year 2009 and also considering the legal submission, this Court dispense with the presence of the respondent/complainant and as it is the summons case, the private complainant more than the complaint and the averment made in it, nothing can be further improved and this Court proceed further based on the submissions made by the learned counsel for the petitioner and the materials available.

7. On perusal of the complaint, it is seen that the accused had requested for financial assistance to the tune of Rs.100,00,000/- from the complainant. The complainant owed and it has been executed based on the a bond and repayment was also been made and finally, the accused, in discharge of the final liability of Rs.66,00,000/-, 10 cheques have been issued, of which, the admitted case of the complainant is that 2 cheques were signed by A2 and A4 and 8 cheques were signed by the 5th accused as partner and authorised signatory to the cheques and it is apparent that this petitioner viz., A3 has not signed any cheques and thereafter, the cheques were presented for encashment, which were dishonoured. Based on which, a liability notice dated 06.06.2008 was issued to the accused and reply was also made, in which, the specific stand of the accused is that as far as, this petitioner is concerned, she had not taken any active part in the business, and she has got no role in the above transaction, in compliance with the statutory conditions, a complaint has been filed against the petitioner by the complainant.

8. Aggrieved against the same, the petitioner / accused had filed quashment petition. On perusal of the complaint and documents, it is clear that the contention of the petitioner seems to be genuine and the petitioner cannot be Vicorourly liable without any tansible material.

9. In view of the above factual and legal position, this petition stands allowed and the case in C.C.No.744 of 2009 on the file of Judicial Magistrate NO.II, Salem, against the accused no.3 alone is quashed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No-II,
Salem.
2. Do-Through The Chief Judicial Magistrate,
Salem.

+lcc to Mr.R.Nalliyappan,Advocate, S.R.No.44990.

Cr1.O.P.No.14676 of 2010

EV(CO)
BM 02/08/2018

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