IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2018

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.No.17533 of 2018
and
Crl.MP.Nos.9095 & 9096 of 2018

Kavita Prasad Aluru ... Petitioner

Vs

M/s.Redington (India) Ltd.,
Rep. by Mr.M.Sundararajan
Senior Executive
SPL Guindy House
95, Mount Road, Guindy
Chennai-600 032. ...Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records and quash the complaint against the petitioner in C.C.No.3958 of 2016 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr.N.S.Amarnath

For Respondent : Mr.Narendran

O R D E R

This Criminal Original Petition has been filed to call for the records and quash the complaint against the petitioner in C.C.No.3958 of 2016 on the file of the IX Metropolitan Magistrate Court, Saidapet, Chennai.

2. For the sake of convenience, the petitioner and the respondent will be referred to as the accused and the complainant respectively.

3. It is the case of the complainant that they are engaged in the business of distribution of computers and computer peripherals and that Sankhya Infotech Limited, Secunderabad (A1) had purchased materials from the complainant for over a period of time to the value of Rs.1,61,08,212/-. Towards the liability, a cheque dated 22.10.2013 was issued by A1 Company, signed by Sridhar Nadupalli (A2). The complainant presented the cheque on 23.10.2013 and the same was returned

with an endorsement "Funds Insufficient". The complainant issued a statutory notice to all the accused on 21.11.2013, calling upon them to pay a sum of Rs.1,61,08,212/-, covered by the cheque. Since the accused did not make the payment, the complainant has initiated the impugned prosecution in C.C.No.3958 of 2016 (Old C.C.No.925 of 2014) for the offence under Section 138 of the Negotiable Instruments Act, 1881, against Sankhya Infotech Limited (A1), Sridhar Nadupalli (A2), Srinivas Nadupalli (A3), Kavitha Prasad Aluru (A4) and Anand Cherukupalli (A5), for quashing which, Kavitha Prasad Aluru (A4) is before this Court.

4. Heard the learned counsel for the accused and the learned counsel for the complainant.

5. The learned counsel for the accused placed strong reliance on the audit annual report of A1 Company and Form 32, to contend that Kavitha Prasad Aluru (A4) is only an independent Director and she was not involved in the affairs of A1 company. The learned counsel also placed reliance on the judgments of the Supreme Court in National Small Industries Corporation Limited Vs. Harmeet Singh Paintal and another [(2010) 3 SCC 330], Pooja Ravinder Devidasani Vs. State of Maharashtra and another [(2014) 16 SCC 1] and the order dated 09.04.2018 passed by this Court in Crl.OP.No.24802 of 2016 and submitted that merely because Kavitha Prasad Aluru (A4) was one of the Directors, she cannot be fastened with criminal liability.

6. On the contrary, the learned counsel for the complainant submitted that there are sufficient averments in the complaint to show the involvement of Kavitha Prasad Aluru (A4) in the transaction in question and therefore, the prosecution against her cannot be quashed.

7. Refuting the contention, the learned counsel for the accused submitted that those allegations in the complaint are indeed general. He has also relied on a Circular of the Ministry of Corporate Affairs, which, speaks about the liability of the independent Director.

8. This Court gave its anxious consideration to the rival submissions.

9. It is a trite law that while dealing with a quash petition, this Court can look into only unimpeachable documents of sterling character and not every document that is produced by the accused in support of his plea. In this case, the accused himself has produced the annual report, which shows that Kavitha Prasad Aluru (A4) is not only in the Board of Directors, but also in the Audit Committee, Investors Grievance Committee and Remuneration & Compensation Committee. Therefore, it cannot be

stated that Kavitha Prasad Aluru (A4) has no role at all to play in the business affairs of A1 company. It is true that in Pooja Ravinder Devidasani (supra), the Supreme Court has clearly held that simply because a person is a Director of the Company, he cannot be made liable under Section 138 of the Negotiable Instruments Act without anything more. In this case, the complainant has made sufficient averments about the involvement of Kavitha Prasad Aluru (A4) in the affairs of A1 company in Paragraph Nos.3, 7, 8, 9 and 10 of the complaint. In fact, in Paragraph No.3 of the complaint, the complainant has stated that Kavitha Prasad Aluru (A4) and other accused had placed orders with the complainant for the supply of computer peripherals to A1 company. In the order dated 09.04.2018 passed by this Court in Crl.OP.No.24082 of 2016, this Court had quashed the prosecution against the petitioner/A6 therein, who was an independent and Executive Director and he was also an advocate by profession. Only in such a situation, the proceedings against the petitioner therein was quashed. In this case, this Court finds that there are sufficient materials even in the documents filed by the petitioner which show that Kavitha Prasad Aluru (A4) was actively involved in the business affairs of A1 company. On facts, the judgements relied upon by the learned counsel for the accused may not apply to the case at hand. Therefore, this petition is dismissed. However, it is made clear that whatever stated herein is only for the limited purpose of deciding the quash petition and the trial Court shall proceed with the trial without being influenced by the observation made above.

10. The learned counsel for the petitioner/accused sought permission of this Court to dispense with the personal appearance of the petitioner before the trial Court.

11. Accepting his submission, the petitioner is directed to appear before the trial Court within a period of two weeks from the date of receipt of a copy of this order. On her appearance, she shall file a petition under Section 436(1) Cr.PC, for bail and the trial Court shall release her on bail on the same day, on she executing a bond for Rs.10,000/- with two sureties. Thereafter, the petitioner shall appear before the trial Court for receiving the complaint, for questioning under Section 251 Cr.PC, at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. For the other hearings, the petitioner shall file a petition before the trial Court under Section 317 Cr.PC., giving an undertaking that she will not dispute her identity and that the counsel named by her in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Crl) 288]. On such a petition being filed, the trial Court may liberally

consider the same. If the accused adopts any dilatory tactics, it is open to the trial Court to insist upon her presence and remand her to custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If the accused absconds, the trial Court shall direct registration of an FIR against her under Section 229-A IPC. The trial Court is directed to complete the proceedings in C.C.No.3958 of 2016 within six months from the date of receipt of a copy of this order, if there is no other legal impediment. Connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

mk

To

The IX Metropolitan Magistrate,
Saidapet, Chennai.

+1cc to Mr.V.T.Narendiran, Advocate SR.No.47450
+1cc to Mr.N.S.Amarnath, Advocate SR.No.47347

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GN(27/07/2018)