

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No. 26545 of 2018

and

Crl.M.P.No. 15281 of 2018

Mrs.G.Florence Jasmine,

W/o.A.Gunasingh,

Trustee,

M/s.Royal Educational Trust,

No.15/177, Old No.18/25,

Saraswathy Nagar,

Marappalam,

Madukkarai Village,

Coimbatore-641 105.

...Petitioner/Accused 3

Vs.

Dr.V.Ramachandran,

S/o.K.Venkatesalu Naidu.

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to call for the records and quash the proceedings in C.C.No.425 of 2018 on the file of Learned Fast Track Judicial Magistrate No.2, Coimbatore for the offence under Section 138 of the Negotiable Instrument Act.

For Petitioner :Mr.S.Sugendran

For Respondent : -

O R D E R

This petition has been filed challenging the proceedings initiated by the respondent under Section 138 of the Negotiable Instrument Act.

2. The petitioner has been added as A3 in the complaint. A1 is the Trust and A2 is the Managing Trustee and A3 is also one of the Trustee and also wife of A2.

3. The learned counsel for the petitioner would submit that this petitioner had no role to play in the entire transaction and she has been unnecessarily arrayed as an accused in the complaint. The learned counsel would further submit that admittedly it is A2, who is the signatory of the cheque.

4.It is seen from the allegations made in the complaint that this petitioner has created a mortgage with the complainant on 23.05.2013 and the complainant had paid the loan amount thereafter. The complaint also further states that the financial transactions took place with active knowledge and consent of A3.

A3 in this case is none other than the wife of A2 and therefore A3 cannot feign ignorance of the transaction.

5. This Court is of the considered view that sufficient allegations has been made against this petitioner in the complaint. The grounds raised by the petitioner are factual in nature and the same has to be raised only before the Court below in the course of proceedings and the Court below shall consider the same on its own merits and in accordance with law.

6. A Trust is a juristic person like a Company, in terms of Section 141 of the Negotiable Instrument Act. Every trustee in-charge of or

responsible for running the day to day affairs of the trust, are liable to be prosecuted besides the trust. This position of law has been spelt out by the Judgement of this Court in the case of Abraham Memorial Educational Trust Vs. C.Suresh Babu reported in 2012 (5) CTC 203. Therefore, the complaint filed by the respondent is maintainable.

7.This Court does not find any ground to interfere with the proceedings of the Court below. The learned counsel for the petitioner made a request for dispensing with the appearance of the petitioner. The presence of the petitioner is dispensed with before the Court below and shall be represented by a Counsel. The petitioner shall appear before the Court at the time of questioning under Section 313 of Cr.P.C., and at the time of passing of the Judgement. The counsel representing the petitioner shall cross examine the witnesses on the very same day, they are examined in chief and the petitioner shall not question the identity of any witnesses.

8.Accordingly, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS ix)

//True Copy//

Sub Assistant Registrar

rm/kmm

To

The Fast Track Judicial Magistrate No.2, Coimbatore

+1cc to Mr.S.Sugendran , Advocate SR.No. 78468

Cr1.O.P.No.26545 of 2018
and

Cr1.M.P.No.15281 of 2018

ASK(29/11/2018)