IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.04.2019
CORAM
THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.2054 of 2014
and
M.P.Nod.1 and 2 of 2014

G.Premavathi ... Petitioner/A2

Vs

M/s.Sri Gowsalya Yarn Stores,
Represented by its duly appointed
Power Agent P.Kumar,
Carrying on Yarn Business at
Door No.85/86, Mahaliamman Koil Street,
Chittode - 638 102, Erode Taluk,
.. Respondent/Complainant

Prayer:
Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the complaint in C.C.No.408 of 2008, dated 23.09.2008 on the file of the learned Judicial Magistrate No.III, Erode and quash the same.

For Petitioner : M/s.R.Marudhachalamurthy
For Respondent : No Appearance

O R D E R

This Criminal Original Petition has been filed by the petitioner seeking to quash the proceedings in C.C.No.408 of 2008 initiated by the respondent for the offence punishable under section 138 of the Negotiable Instruments Act, (hereinafter referred to as "NI Act"), on the file of the learned Judicial Magistrate No.III, Erode.

2. The case of the petitioner/A2 is that the petitioner she has not participated in day-to-day affairs of the first accused firm and she has retired from the Partnership Firm. The petitioner, after receipt of statutory notice dated 14.08.2008 from the respondent's counsel, gave detailed reply on 20.08.2008, wherein she has clearly and categorically stated that she retired from the Partnership Firm and she is not liable to pay any amount to the respondent and even in the date of transaction, she has not acted as a partner to the 1st accused firm. The averment contained in the complaint and doucment filed along with the complaint do not constitute any offence as punishable under Sections 138, 141 and 142 of the NI Act. Hence, she prayed that the said complaint

in C.C.No.408 of 2008 pending on the file of the learned Judicial Magistrate No.III, Erode, may be quashed as against her.

3. The case of the respondent/complainant is that the 1st accused in the complaint is Sri Sabari Vishnu Textile and the 2nd and 3rd accused are the active partners of the 1st accused firm and the 4th accused is the Manager of the 1st accused firm. The complainant alleged in his complaint that the accused used to purchase yarn on credit from the complainant and thereby they had business transaction with the complainant and in due course of business, it is alleged that the accused have to pay the balance amount of Rs.4,99,500/- to the complainant on 17.06.2008. It is further alleged in the complaint that the 4th accused who is the Manager of the 1st accused firm, on instructions of accused 2 and 3, acknowledged the said due to the complainant and to settle the same, the 4th accused in the complaint issued five post dated cheques for the said total amount of Rs.4,99,500/- in favour of the complainant, which is drawn on Indian Overseas Bank, Komarapalayam Branch which are mentioned hereunder:

Cheque Numbers	Date	Amount (Rs.)
413149	01.07.2008	1,00,000.00
413150	04.07.2008	1,00,000.00
413151	08.07.2008	1,00,000.00
413383	02.08.2008	1,00,000.00
413384	05.08.2008	99,500.00

In the complaint, the active partners participated in all the day-to-day affairs of the 1st accused firm and they are liable to pay the said balance amount to the complainant. The complainant alleged that on prior intimation on 05.08.2008, the cheques were presented for collection in his Catholic Serian Bank Limited, Bhavani and the same got returned with endorsement "exceeds arrangements".

4. Heard the learned counsel appearing for the petitioner and none appeared on behalf of the respondent/complainant.

5. There are totally four accused and the present petitioner is arrayed as A2. The complaint has been initiated by the respondent/complainant as against the present petitioner and others for the offence punishable under section 138 read with 141, 142 of the NI Act.

6. On a perusal of the documents, it is seen that the petitioner was one of the partners of the first accused Partnership Firm viz., Sri Sabari Vishnu Textile. The Deed of Partnership was executed on 01.04.2008 and thereafter the petitioner retired from the Partnership Firm and the same was registered before the Registrar of Firms, Namakkal, under the Societies Registration Act. It is also seen from Form-A submitted by the petitioner issued by the Registrar of Firms, whereas, the complaint was field by the respondent/complainant on the basis of the alleged cheques dated 01.07.2008, 04.07.2008, 08.07.2008, 02.08.2008 and 05.08.2008. Admittedly, the petitioner was not a partner at the time of issuance of the cheques by the first accused Partnership Firm, which is also evident by way of reply notice issued by the learned counsel for the respondent, dated 20.08.2008 which reads as follows:

> "Your client has caused you to issue notice to a wrong person. My client is not a partner of alleged M/s.Sri Sabhari Vishnu Textiles. My client has withdrawn from the partnership from 01.04.2008 by executing a withdrawal of Partnership deed on 01.04.2008. By way of execution of withdrawal of partnership deed, my client is discharged from any liability to any third party for acts of the firm done either before or after her withdrawal. Hence, my client is not liable to pay any amount much less Rs.4,99,500/- and my client cannot be prosecuted. My client is not a drawer of the cheques mentioned in your notice and hence she is not liable to pay any amount and she is not liable to be prosecuted."

7. Therefore, the learned Judicial Magistrate, Erode, ought not to have taken cognizance as against the petitioner, since she has already retired from the Partnership Firm as early as on 01.04.2008 itself. Therefore, the complaint cannot be sustained as against the petitioner and it is nothing but an abuse of process of law. Therefore, this Court is inclined to allow this petition as against the present petitioner.

8. Accordingly, the Criminal Original Petition is allowed and the proceedings in C.C.No.408 of 2008 are quashed as against the petitioner alone.

9. Considering the fact that the case is of the year 2008. The learned Judicial Magistrate No.III, Erode, is directed to complete the trial in C.C.No.408 of 2008 as against the other accused persons and dispose of the case within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

msm

To

1. The Judicial Magistrate No.III, Erode.

2. The Public Prosecutor, High Court, Madras.

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and
M.P.Nod.1 and 2 of 2014

pm(CO)
A.SK(06/05/2019)