



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.16699 of 2014

and

M.P. (MD)Nos.1 and 2 of 2014

Kavitha

... Petitioner

Vs.

M.N.Karunanidhi

... Respondent

**Prayer:** Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to C.C.No.388 of 2013, on the file of the Fast Track Court/Magistrate Level, Karur, quash the same in respect of the petitioner by allowing this criminal original petition.

For Petitioner : Mr.P.Samuel Gunasigh

For Respondent : No appearance

### O R D E R

The petitioner is shown as A3 in C.C.No.388 of 2013, on the file of the learned Fast Track Court (Magistrate Level), Karur. It is a case arising under Section 138 of Negotiable Instruments Act. This criminal original petition has been filed for quashing the proceedings insofar as A3 is concerned. A3 is the wife of the A2, who had actually signed in the cheque. The account stands in the name of A1's firm. Both A2 and A3 are partners in the said firm. The counsel for the petitioner states that the petitioner is only a sleeping partner and the activities of the firm are only managed by her husband namely., A2.

2.He placed reliance on the decision of the Honourable Supreme Court made in **S.L.P. (Crl.)No.5083 of 2008, dated 06.07.2010 (Central Bank of India Vs. M/s.Asian Global Ltd., and Ors)**. The Honourable Supreme Court held as follows:-

"14.The law as laid down in S.M.S.Pharmaceuticals Ltd.'s case (supra) has been consistently followed and as late as in 2007, this Court in the case of N.K. Wahi's case (supra), while considering the question of vicarious liability of a Director of a Company, reiterated the sentiments expressed in S.M.S.Pharmaceuticals Ltd.'s case



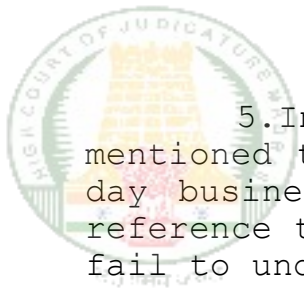
(supra) that merely being a Director would not make a person liable for an offence that may have been committed by the Company. For launching a prosecution against the Directors of a Company under Section 138 read with Section 141 of the 1881 Act, there had to be a specific allegation in the complaint in regard to the part played by them in the transaction in question. It was also laid down that the allegations had to be clear and unambiguous showing that the Directors were in charge of and responsible for the business of the Company. This was done to discourage frivolous litigation and to prevent abuse of the process of Court and from embarking on a fishing expedition to try and unearth material against the Director concerned."

3.He also placed reliance on a recent decision of this Court made in **Crl.O.P. (MD)No.19666 of 2016, dated 30.10.2018 (S.Shiyamala Vs. Crompton Greaves Limited)**. Paragraph 3 of the said order reads as follows:-

3. This Court is able to find force in the submission made by the learned counsel for the petitioner. The entire reading of the complaint does not reveal any allegation with regard to how and in what manner the petitioner was actively involved in the business or was in charge and responsible for the conduct of the business of the firm. A bold statement has been made in the complaint stating that the petitioner is a partner and she is the wife of the second accused and therefore, she is also an active partner firm. This averment made in the complaint does not satisfy the requirements of Section 141 of the Negotiable Instrument Act.

4.I am not persuaded by the aforesaid submissions of the petitioner's counsel. A mere reading of the complaint would indicate that the complaint contains relevant averments for fastening penal liability on the petitioner herein. In 4<sup>th</sup> paragraph of the complaint, a reference to the consent of this petitioner is said out. Paragraph 4 of the complaint reads as under:-

"That both accused 2 and 3 are actively participating in day to day business activities of the 1<sup>st</sup> accused firm, as such the said loan amount has been borrowed only with the knowledge and consent of 3<sup>rd</sup> accused for the welfare of the 1<sup>st</sup> accused partnership concern business and hence all the accused are jointly and severely liable to pay the loan amount due to the complaint."



5.In 10<sup>th</sup> paragraph of the complaint also it has been mentioned that this petitioner is actively participating in day-to-day business activities of the first accused's firm. In fact a reference to the second and third accused are in the same breadth. I fail to understand what more the complainant can do beyond this.

6.I am therefore of the view that the petitioner will have to necessarily make out her defences only in the trial. No case has been made out for quashing the impugned proceedings. Hence, the criminal original petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS-III)

/TRUE COPY/

Sub Assistant Registrar

To:

The Judicial Magistrate,  
Fast Track Court, Karur.

+1 CC to M/s.P.SAMUEL GUNASINGH, Advocate ( SR-86261[F] dated  
12/09/2019 )

**Crl.O.P. (MD) No.16699 of  
2014  
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