



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.O.P.(MD) No.7023 of 2014
and
M.P(MD) .No.2 of 2014

S.Malarvizhi : Petitioner/Accused No.3

Versus

S.Raja : Respondent/Complainant

Prayer: Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the entire records of C.C.No.133 of 2013 on the file of the Judicial Magistrate, Aranthangi and quash the same.

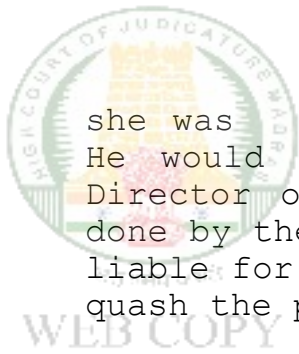
For Petitioner : Mr.T.Senthil Kumar
For Respondent : Mr.T.Lenin Kumar

O R D E R

This petition has been filed to call for the entire records in C.C.No.133 of 2013 on the file of the Judicial Magistrate, Aranthangi and quash the same.

2.The case of the complainant is that the petitioner is third accused. She along with accused No.2, namely Jothivel who is the Managing Director in the M/s.Vasupati Construction Solutions Private Limited, borrowed a sum of Rs.12,50,000/- from the respondent herein. In order to discharge the liability, the accused No.2 has issued a cheque. The said cheque was presented by the respondent before the Bank on 28.03.2013, and the same was returned for the reason 'payment stopped by the drawer'. Thereafter, the respondent lodged a private complaint before the learned Judicial Magistrate, Aranthangi under Section 138 of the Negotiable Instrument Act, against the petitioner and other accused and the complaint was taken cognizance, and pending in C.C.No.133 of 2013. Now to set aside the said C.C., the petitioner filed this present petition.

3.The learned Counsel for the petitioner would submit that absolutely there was no averment implicating the petitioner that,



she was in-charge or responsible for the affairs of the Company. He would further submit that the petitioner is only a sleeping Director of the aforesaid Company. All the transactions have been done by the other accused and the petitioner cannot made vicariously liable for the offence committed by the Company. Hence, she prays to quash the proceedings initiated in C.C.No.133 of 2013.

4.The learned counsel appearing for the respondent would submit that the petitioner is a Director of M/s.Vasupati Construction Solution (P) Limited, and she was also actually involving in the day to day transaction of the said Company. The petitioner along with other accused borrowed money from the respondent. The petitioner is also responsible to discharge the liability and the issue raised in the petition can be decided only in the trial. Hence, he prays to dismiss this petition.

5.I have heard the learned counsel appearing on either side and perused the materials available on record.

6.The grievance of the petitioner is that she is only a sleeping partner in the first accused Company and she is not in-charge for the affairs of the Company, she cannot made vicariously liable for the offence alleged to have been committed by the first accused. On a perusal of record, it is seen that an earlier, a demand notice has been issued to all the accused, for which, common reply was also sent on behalf of all the accused, wherein they have taken stand that the cheque was not given to the complainant, and that cheque was issued in favour of M/s.Ramesh Kumar Finance, that has been misused by the complainant. Nowhere in the reply notice, the petitioner stated that she is only a sleeping partner and she was not responsible for the affairs of the company. That apart, the complaint filed by the complainant has clearly mentioned that both the petitioner and the second accused were jointly approached the complainant and received a sum of Rs.12,50,000/- and also given an assurance to the complainant that to repay the amount, the second accused being a Managing Director, has issued a cheque.

7.In the above circumstances, at this stage, the complaint cannot be quashed holding that the petitioner is not responsible for the day to day affairs of the Company as it is a matter for trial. Accordingly, this Criminal Original petition is dismissed. Consequently, the connected miscellaneous petition is closed.

8.At this juncture, the learned counsel appearing for the petitioner submitted that the petitioner is a lady and therefore, her appearance may be dispensed with.

9.After dismissal of the quash petition, no such direction could be issued. If the petitioner has any difficulty in appearing before the trial Court, it is always open to the petitioner to file an application before the trial Court seeking for dispensing with



the personal appearance. If any such application is filed, it is for the Court concerned to consider the same and pass appropriate orders on merits and in accordance with law.

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Sd/-

Assistant Registrar (AS)

Sub Assistant Registrar(CS)

msa

To
The Judicial Magistrate
Aranthangi

**Crl.O.P. (MD) No.7023 of 2014
and**

M.P(MD) .No.2 of 2014

Dated: 22.07.2019

KK/SAR/29.08.2019/3P-2C/