IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.6831 of 2020
and Crl.MP.Nos.3733 & 3734 of 2020

P.Sarala
W/o. M.Ganesan,
Door No.59, Sri Chakara Avenue,
Annamalai Nagar, Phase-II,
Cudalure District. ... Petitioner/Accused-10

Vs.

S.Sasikala,
W/o.K.Chezhian,
4/533-A, Andavar Nagar,
Trichy Road,
Namakkal Taluk & District. ... Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in S.T.C.No.308 of 2019 on the file of the learned Judicial Magistrate No.1, Namakkal and quash the same.

For Petitioner : Mr.A.Padmanaban

For Respondent : Mr.K.T.S.Sivakumar

ORDER

This petition has been filed to quash the proceeding in S.T.C.No.308 of 2019 on the file of the learned Judicial Magistrate No.1, Namakkal, thereby taken cognizance for the offences under Sections 138 and 142 of Negotiable Instruments Act 1881 (herein after referred as NI Act), as against the petitioner.

2. The learned counsel appearing for the petitioner would submit that the respondent filed complaint for the offences punishable under Section 138 of NI Act, in which the petitioner is arrayed as 10th accused. After receipt of the statutory notice issued under Section 138 of NI Act, the petitioner has given a detailed reply notice stating that the petitioner was one of the

trustee of Venkatramana Educational Trust, viz., the first accused in the complaint and thereafter she resigned from her trusteeship by her resignation letter dated 28.08.2013. Therefore, she is not at all liable for any of the offence committed by the trust or other trustee. Her resignation letter also duly accepted by the first accused/trust and by communication dated 01.09.2013, they resolved to accept the resignation of the petitioner and she relieved from Venkatramana Educational Trust with effect from 01.09.2013. It was duly endorsed by other trustees. Even after receipt of the reply notice, the respondent lodged the impugned complaint including the petitioner as 10^{th} accused and initiated proceedings for the offences punishable under Sections 138 and 142 of NI Act. Therefore, the entire proceedings is liable to be quashed and sought for quashment of the entire proceedings.

3. Per contra, the learned counsel appearing for the respondent would submit that the respondent filed complaint for the offences punishable under Sections 138 and 142 of NI Act and alleging that all the trustees have approached the respondent on 27.08.2012 and borrowed a sum of Rs.10 lakhs for the improvement of the trust. In order to repay the said amount, the accused persons have issued cheque for a sum of Rs.10 lakhs. It was presented for collection and the same was returned dishonoured for the reason that "funds insufficient". After issued statutory notice under Section 138 of NI Act, the respondent initiated the present proceedings as against the accused persons. As far as the petitioner is concerned, she is also one of the trustees and there are specific allegations made in the complaint as such she has vicarious liability for the offences punishable under Sections 138 and 142 of NI Act. He further submitted that the resignation letter given by the petitioner and the resolution passed by the first accused trust have to be tested before the trial Court and it cannot be considered before this Court that too under Section 482 of Cr.P.C. Therefore, all the grounds raised by the petitioners are mixed question of fact and hence, prayed for dismissal of the quash petition.

4. Heard Mr.A.Padmanaban, learned counsel appearing for the petitioner and Mr.KTS.Sivakumar, learned counsel appearing for the respondent.

5. The respondent lodged complaint as against the petitioner and others for the offence under Sections 138 and 142 of NI Act alleging that the petitioner and other accused persons have borrowed a sum of Rs.10 lakhs to develop their trust. They also promised to repay by doubled the amount which borrowed by them after five years. As per their promise, the accused persons did not repay the amount even after several years. Only on the request made by the respondent, after the period of five years,

the accused persons issued cheque for a sum of Rs.10 lakhs and the same was presented for collection. Unfortunately, the cheque was returned dishonoured for the reason that "the funds insufficient". After issuing statutory notice, the respondent initiated the present proceedings.

6. It is seen from the complaint, on 23.02.2019 the respondent issued statutory notice under Section 138 of NI Act to all the accused persons. The said notice was duly received by the petitioner herein ie., 10th accused in the complaint and she also issued reply notice dated 23.03.2019. In the reply notice, she categorically stated that she was one of the trustees of the Venkatramana Educational Trust and she was unable to travel to the place of the trust because of her health issues. She also stated that she was not able to devote attention to the activities of the trust as such she expressed her desire to resign from the trust office, by a letter dated 28.08.2013. On receipt of the same, the first accused by resolution dated 01.09.2013, accepted her resignation letter and she was relived from the first accused trust with effect from 01.09.2013. In fact, all the trustee were endorsed the said resolution dated 01.09.2013.

7. According to the respondent, before five years from the date of issuance of cheque, the accused persons had approached the respondent and assured that if she invested the amount with the first accused trust, they will return double amount within a period of five years. The respondent believed the words of the accused persons and on 27.08.2012 she paid a sum of Rs.10 lakhs to develop the trust. Thereafter on 30.01.2019, the accused persons have issued the alleged cheque for a sum of Rs.10 lakhs. Therefore, on the date of issuance of cheque viz., 30.01.2019, the petitioner has already been relieved from her trusteeship from the first accused trust. In fact, she was relieved from her trusteeship as early as on 01.09.2013. It is also proved by her reply notice dated 23.03.2019. After receipt of the reply notice, the respondent failed to send any rejoinder to the petitioner. It shows that the respondent accepted the reply notice sent by the petitioner herein.

8. It is relevant to relay upon the judgment reported in 2012 Crl. L.J. 625 in the case of Anita Malhotra Vs. Apparel Export Promotion council & Anr., in which the Hon'ble Supreme Court of India held as follows:-

> "15) This Court has repeatedly held that in case of a Director, complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the accused Company

for conduct of its business and mere bald statement that he or she was in charge of and was responsible to the company for conduct of its business is not sufficient. [Vide National Small Industries Corporation Limited vs. Harmeet Singh Paintal and Another, (2010) 3 SCC 330]. In the case on hand, particularly, in para 4 of the complaint, except the mere bald and cursory statement with regard to the appellant, the complainant has not specified her role in the day to day affairs of the Company. We have verified the averments as regard to the same and we agree with the contention of Mr. Akhil Sibal that except reproduction of the statutory requirements the complainant has not specified or elaborated the role of the appellant in the day to day affairs of the Company. On this ground also, the appellant is entitled to succeed."

9. The another judgment reported in AIR 2017 SC 2854 in the case of Ashoke Mal Bafna Vs. M/s. Upper India Steel Mfg. & Engg. Co. Ltd., which reads as follows :-

"10. To fasten vicarious liability under Section 141 of the Act on a person, the law is well-settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the company and in-charge of and responsible for the conduct of the business at the time of commission of an offence will be liable for criminal action [see : Pooja Ravinder Devidasanl V. State of Maharashtra & Ors., AIR 2015 SC 675]

11. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the Company under Section 141 of the Act, there must be specific avernments against the Director showing as to how and in what manner the

Director was responsible for the conduct of the business of the Company"

The above judgments are squarely applicable to the case on hand and the entire proceedings cannot be sustained as against the petitioner herein. Therefore, the petitioner need not go for ordeal of the trial and the entire proceeding is liable to be quashed as against the petitioner.

10. In view of the above discussion, this Criminal Original Petition stands allowed and the proceedings in S.T.C.No.308 of 2019 on the file of the learned Judicial Magistrate No.1, Namakkal, is hereby quashed insofar as the petitioner is concerned. The trial Court is directed to proceed with the trial as far as other accused persons are concerned and pass orders in accordance with law. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

rts

To

1.The Judicial Magistrate No.1,
Namakkal

+1cc to M/s.A.Padmanabhan, Advocate, Sr.No.26398
+1cc to M/s.K.T.S.Sivakumar, Advocate, Sr.No.26308

CRL.O.P.No.6831 of 2020 and
Crl.MP.Nos.3733 & 3734 of 2020

KJ(CO)
GS(19/10/2020)