IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.12596 of 2020
and Crl. M.P. Nos.4959 and 4994 of 2020

1.Beena Chandramohan
2.Bhuvaneswari ... Petitioners
Accused 3 & 5

Vs.

1.R.Chintamani ..1st Respondent/Complaiant
2.M/s.Wolman Trading and Social Networking
Private Limited,
New No.726, Anna Salai,
Nandanam, Chennai - 600 035. ..2nd Respondent/Accused No.I

3.R.C.Chandramohan ..3rd Respondent/Accussed No.2

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the case in C.C. No.95 of 2018 pending on the file of the Fast Track Judicial Magistrate at Alandur, Chennai and quash the same in so far as these petitioners are concerned.

For Petitioners: Mr. C.V.Sridharan

O R D E R

This Criminal Original Petition has been filed to call for the records relating to the case in C.C. No.95 of 2018 pending on the file of the Fast Track Judicial Magistrate at Alandur, Chennai and quash the same in so far as these petitioners are concerned.

2. It is seen that the petitioners are arrayed as accused 3 and 4 on the complaint lodged by the respondents for the offence punishable under Section 138 Negotiable Instruments Act. There are totally four accused and the first accused is a company and the second accused is the Managing Director of the Company and the second to fourth accused are in control of the affairs of the first accused company.

3. Learned counsel for the petitioners would submit that as

far as the petitioners are concerned they are no way connected to the day to day affairs of the first accused company and they are not the in charge of the company and as such they are not liable for the offence committed by the first accused under Section 138 Negotiable Instruments Act. He would further submit that the first accused company is completely in charge of the second accused signature on the impugned cheque and as such, the petitioners are neither signatory to the cheque nor involved in day to day affairs of the company. Therefore, he sought for quashment of the entire proceedings in C.C. No.95 of 2018.

4. It is seen that the first respondent alleged to have attended the training so far as conducted by the accused company and all the accused persons assured that on the Franchise module of the benefits of the company, they would return the amount to the tune of Rs.25,000/- per module commencing from August 2017. On the confidence assured by the accused persons, the first respondent were forced to take up the Franchise module in which she transfered the money to the tune of Rs.15,00,000/- to the accused persons through IMPS and RTGS. Thereafter, the first respondent had been repeatedly asking for the agreement and she did not receive any agreement from the accused and also she did not receive any rental payments. Therefore, the first respondent informed her willingness to withdraw her association from from the accused persons and asked for the refund of money to the tune of Rs.15,00,000/- towards repayment of the said amount. Thereafter, a cheque was issued by the first accused company in favour of the first respondent with signature attested by accused No.2. The same was presented for collection and the cheque was returned dishonoured for the reason that “Stop Payment Instruction”. Hence the first respondent issued statutory notice and after the accused failed to repay the amount, the first respondent had initiated the proceedings under Section 138 of Negotiable Instruments Act.

5. It is seen that there are specific allegations as against all the accused and that would also reveal about their participation and involvement on the first accused company. It is relevant to extract paragraphs 6,7 & 8 of the complaint given by the first respondent:

> ... 6. The complainant states that all the accused No: 2 to 4 were also present during the training sessions. Also the testimonies given by the people who have already attended the sessions was so genuine that the complainant also intended to get associated with the accused network and contacted the accused No:1 for further details. That the accused No:2 and 3 also spoke to the complainant on the franchisee model and the benefits of it. That

the accused No:2 and 3 also promised returns to the complainant to the tune of Rs.25,000/- per month commencing from August 2017.

7.That the accused Nos:2 to 4 gave lots of confidence to the complainant and since both the complainant and the accused Nos:2 to 3 hail from the same state, the complainant took the accused Nos:2 to 3 into confidence and believed all the magical promises. That due to the continuous persuasion given by the accused No:2 to 3 the complainant was forced to take up the franchisee model.

8.That the complainant believed all the false promises given by the accused No.2 to 3, took loan on the fixed deposits she had and transferred monies totaling to Rs.15,00,000.00 (Rupees Fifteen lakhs only) to the accused No.1 comapany on various dates, which has been acknowledged by the accused company, the details of which are as follows:

Sr.No.	Cheque details	Date	Amount - (Rs.)
1	000004 - City Union Bank	31.03.2017	1,00,000.00
2	IMPS - City Union Bank	26.04.2017	1,00,000.00
3	IMPS - City Union Bank	28.04.2017	1,00,000.00
4	IMPS - City Union Bank	26.05.2017	1,00,000.00
5	IMPS - City Union Bank	27.05.2017	1,00,000.00
6	IMPS - City Union Bank	15.06.2017	4,00,000.00
7	IMPS - City Union Bank	18.07.2017	4,00,000.00
8	RTGS - Cosmos Bank, Madipakkam	31.07.2017	2,00,000.00
		Total	15,00,000.00

That the accused Nos.2,3 and 4 along with the daughter and mother-in-law of the second accused had personally visited the complainant's place and after seeing a part of the premise lying vacant, requested the complainant to take on lease / rental of the vacant premise for which the complainant also accepted for the same. Such was the belief that the complainant had on all the accused. The complainant further states that all the accused No.2, 3 and 4 showed so much of care and affection towards the complainant and said that the complainant was one among their family members and she need not feel lonely.

9.The complainant being a single lady, trusted the accused No.2 and 3 so much that the complainant believed more than her two sons living abroad. The complainant further states that she had even extended all her possible expertise to the accused to obtain all statutory licenses to run the accused No.1 company.

....

11.That on receiving the monies, the accused No.2 and 3 failed to draw up the franchisee agreement in spite of several requests and remainders. When the complainant had been repeatedly asking for the agreement the accused No.2 and 3 always replied that accused No.4 is drawing up the agreement and would give to the complainant when ready. The accused No.4 was also giving false promises to the complainant and has been dodging the complainant without the franchisee agreement. In the meantime, the accused had also commenced their e-commerce business and also started using the complainant's premises.

...

15.That the complainant had immediately informed accused No.2 to 4 on the cheque bounce and requested to honour the cheque. However, none of the accused responded. Repeated requests, follow ups and personal visits were in vain. The intention to deceive the complainant is well established by all the accused herein."

6. It is seen from the above, specific allegations are against the petitioners that they have involved in the day to day affairs of the first accused company and as such they are also in charge of the first accused company. Therefore, they are liable to be punished. This Court is not inclined to quash the entire proceedings in C.C. No.95 of 2018 pending on the file of the Fast Track, Judicial Magistrate, Alandur, on the grounds raised by the petitioners.

7. This Criminal Original Petition is devoid of merits and stands dismissed. Consequently, connected miscellaneous petitions are closed. The personal appearance of the petitioners are dispensed with before the trial Court. The trial Court is directed to complete the trial within a period of nine months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bkn

To
The Fast Track Judicial Magistrate at Alandur,
Chennai.

Crl.O.P.No.12596 of 2020

RJI(CO)
RMP(07/10/2020)