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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.32396 of 2019 and
Crl.M.P.Nos.17853 & 17854 of 2019

Umesh Sharma,
W/o. Sanjay Sharma

... Petitioner/Accused -2

Vs.

M/s. Anu International,
Rep by its Partner B.Prakash,
S/o. Balamurali,
N.B.Leather Land,
No.24, Thiruvengadam Street,
Periyamet,
Chennai - 600 003.

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in S.T.C.No.506 of 2019 on the file of the Fast Track Court Magisterial Level-II, Poonamallee and quash the same as against the petitioner.

For Petitioner : Mr.M.Premkumar

For Respondent : No appearance

O R D E R

This petition has been filed to quash the proceedings in S.T.C.No.506 of 2019 on the file of the Fast Track Court Magisterial Level-II, Poonamallee, thereby taken cognizance for the offence under Section 138 of Negotiable Instruments Act (herein after referred to as 'NI Act') as against the petitioner.

2. The learned counsel appearing for the petitioner submitted that the respondent lodged complaint under Section 138 of NI Act as against three persons in which the petitioner is arrayed as second accused. Admittedly, the petitioner is not a signatory of the cheque. Therefore, in order to invoke vicarious liability against the petitioner under Section 141 of NI Act, there should be clear, specific, unambiguous and categorical



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averments in the complaint as to the role played by the persons-in-charge/directors in the conduct of the business of the company. But the complaint did not disclose about in what manner the petitioner was involved in the day-to-day affairs of the company. Only to harass the petitioner, she has been falsely implicated as accused. In support of his contention, the learned counsel also relied upon the judgment reported in (2010) 2 SCC (Cr1) 1113 in the case of Nationsl Small Industries Corporation Ltd., Va. Harmeet Singh Paintal.

3. Heard Mr.M.Premkumar, learned counsel appearing for the petitioners and no one has appeared on behalf of the respondent.

4. The respondent initiated proceedings under Section 138 of NI Act as against the petitioner and two others alleging that, the respondent is engaged in whole sale supply of finished leather goods and during the business transaction the respondent supplied the finished leather goods to one M/s. North East Garments Pvt. Ltd., Noida and also M/s. Mac Enterprises, New Delhi, on the basis of the orders raised by the third accused. In the said business transaction, the third accused issued three cheques towards the repayment of the goods purchased by them. The cheques were presented for collection and the same were returned with an endorsement "Payment stopped by the drawer". After causing statutory notice, the respondent initiated the present proceedings under Section 138 of NI Act.

5. The only point raised by the learned counsel appearing for the petitioner is that even according to the respondent, the first accused is the Proprietorship firm and the second accused neither the proprietor nor the signature to the cheque, as such she is not liable to prosecute for the offence under Section 138 of NI Act. On perusal of the complaint, the impugned cheques were issued on behalf of M/s.Vijaya Priya International as proprietorship firm. The said firm represented by its representatives Umesh Sharma and Sanjay Sharma viz., the second and third accused. They are none other than the husband and wife and they are the proprietors of M/s.Vijaya Priya International. Therefore the respondent caused statutory notice as contemplated under Section 138 of NI Act to all the accused persons. The third accused replied by reply notice dated 30.05.2019, in which there is no whisper about the allegations raised by the respondent. That apart the respondent/ defacto complainant rightly add all the proprietors of M/s.Vijaya Priya International as accused.

6. On perusal of the complaint also reveled that, the respondent/defacto complainant engaged in whole sale supply of finished leather goods and during the course of business the third accused approached the complainant and represented that he



along with the petitioner/second accused is dealing with leather products in Ranipet, Vellore District in the name of M/s. Vijaya Priya International and they are proprietors of the said firm. Therefore the petitioner being the proprietor of M/s.Vijaya Priya International, she is also liable to be prosecuted and the defacto complainant rightly lodged the complaint against the petitioner. Further all the points raised by the petitioners are involved question of fact and it cannot be decided under Section 482 of Cr.P.C.

7. In view of the above discussions, this Criminal Original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Fast Track Judge
Magisterial Level-II,
Poonamallee.

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srg 01/07/2020