

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.02.2021
CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl. OP No.384 of 2021
and Crl. MP Nos.197 & 198 of 2021

Smt.Alka Kumar ... Petitioner /Accused 3

vs.

M/s.Dhoot Fabrics
Rep. By its Power Agent,
Vijayakumar,
No.280, Cutchery Street,
Erode 638 001,
Erode Taluk and District. ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in S.T.C.No.530 of 2018 on the file of the Judicial Magistrate Fast Track Court No.II, Erode, quash the same.

For Petitioner : Mr.R.Karthikeyan
For Respondent : Mr.C.E.Prathap

ORDER

This petition has been filed seeking to quash the proceedings in S.T.C. No.530 of 2018 on the file of the Judicial Magistrate, Fast Track Court No.II, Erode.

2. The respondent has filed a complaint under Section 138 of the Negotiable Instruments Act, against the petitioner and two others. The petitioner has been arrayed as A3 in this complaint.

3. The learned counsel appearing for the petitioner submitted that the petitioner has been added as an accused only on the ground that she is a Director in the A1 Company and the allegations made in the complaint does not satisfy the requirements of Section 141 of the Negotiable Instruments Act. The learned counsel for the petitioner in order to substantiate

his submissions relied upon the judgment of this Court in Anil Pathak v. Larsen and Toubro Limited, reported in 2018 SCC online Mad 3522.

4. Per contra, the learned counsel for the respondent submitted that necessary allegations have been made in the complaint against the petitioner also and the liability that was pointed out in the statutory notice was not even refuted by the petitioner. The learned counsel further submitted that the petitioner is none other than the wife of A2 and she is also a Director, who was incharge and responsible for the conduct of the day to day affairs of the Company. The learned counsel therefore submitted that the petitioner has to necessarily face the trial before the Court below and establish her innocence.

5. This Court has carefully considered the submissions made by the learned counsel on either side and the materials available on record.

6. The allegation made against the petitioner in the complaint is extracted hereunder:

"4. The complainant begs to submit that, the complainant is a registered partnership firm and doing business in textiles under the name and style of M/s.Doot Fabrics. The accused No.1, is a Private Limited Company and doing business in textiles. The accused No.2 and 3 are the directors of the accused No.1. They are looking after day to day business of the accused No.1. The accused No.2 and 3 on behalf of the accused No.1 used to purchase textile goods on credit basis from the complainant under various invoices as detailed hereunder..."

7. In the present case admittedly the signatory of the cheque on behalf of A1 Company was A2. If the petitioner has to be roped in as an accused on the ground that she was a Director of A1 Company, the requirements of Section 141 of the Negotiable Instruments Act, will have to be satisfied.

8. To fasten the vicarious liability under Section 141 of the Negotiable Instruments Act, a complainant should specifically allege in the complaint, as to how and in what manner, the concerned accused person was responsible or incharge of the conduct of the business of the Company.

9. This position of law has been made very clear in the judgment cited by the learned counsel for the petitioner after referring to all the earlier judgments of the Hon'ble Supreme

Court. A mere reproduction or repetition of the words found under Section 141 of the Negotiable Instruments Act, does not satisfy the requirements to rope in the petitioner as an accused in this case.

10. In view of the above discussion, the continuation of the proceedings as against the petitioner is an abuse of process of Court which requires the interference of this Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure.

11. In the result, the proceedings in S.T.C. No.530 of 2018 on the file of the Judicial Magistrate, Fast Track Court No.II, Erode is quashed insofar as the petitioner is concerned.

12. The Court below is directed to proceed further with the complaint against the other accused persons and complete the proceedings within a period of three months from the date of receipt of a copy of this Order. This Criminal Original Petition is allowed with the above directions. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

jv
To

1. The Judicial Magistrate Fast Track Court No.II,
Erode.

+1cc to Mr.R.Karthikeyan , Advocate SR.No. 9053

+1cc to Mr.C.E.Prathap , Advocate SR.No. 9136

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cp (CO)
A.SK(09/03/2021)

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