



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.20241 OF 2017

AND

CRL.M.P.NOS.12160 & 12161 OF 2017

S.Umamaheswari

... Petitioner/Accused

Vs.

M/s.Yoshiaki Chemicals Co (P) Ltd.,
A Private Limited Company
Represented by its Director S.Soobaramanien
No.1/63A, N.H. Main Road,
Pudhupalayam Pirivu, Perumanallur,
Tirupur
Represented by Power of Agent/Accountant,
J.Ranganatha Naidu,
M/s.Yoshiaki Chemicals Co (P) Ltd, Tirupur.

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.678 of 2017 on the file of the Fast Track Court (Magisterial Level) No.2, Coimbatore, and quash the same.

For Petitioner : Mr.K.S.Karthik Raja

For Respondent : Mr.K.Mylsamy

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.678 of 2017 on the file of the Fast Track Court (Magisterial Level) No.2, Coimbatore.



2.The case of the complainant is that, A1 is a Private Limited Company and A2 is the Managing Director of the A1 company and A3 and A4 are the Directors of the A1 company, who are actively taking part in the day to day affairs of the company. A1 company approached the complainant Company for supply of dyes and chemicals and on account of the business transactions, an outstanding balance of Rs.80,97,394/- was due and payable by the accused. When the complainant demanded the money, A3, as the Director and Authorized Signatory of the A1 Company, issued two cheques drawn on HDFC Bank for a total sum of Rs.20,00,000/-. When the cheques were presented by the complainant for encashment, the same were returned unpaid for insufficiency of funds. Hence, after complying with the necessary conditions, the complainant initiated prosecution against A1 to A4 for the offence under Section 138 of the Negotiable Instruments Act.

3.The petitioner before this Court is A4.

4.The learned counsel for the petitioner submitted that the present petitioner/A4 is not a Director, but he is only a shareholder of the company and further, except making a pleading that this petitioner and the other Directors are actively in-charge of the Company, there is no other material available on record to show that the present petitioner is actively involved in the affairs of the Company. The learned counsel relied on Articles of Association and various other documents to show that the present petitioner is not a Director of the Company. Therefore, the learned counsel prays for quashment of the complaint as against the present petitioner/A4.

5.Per contra, the learned counsel for the respondent/complainant would submit that, in a similar complaint, the present petitioner is also a party to the compromise and submitted that the case is now posted for trial. The learned counsel further contended that, all the documents now relied upon by the learned counsel for the petitioner are subsequent to the initiation of the complaint. Therefore, it is his contention that there are sufficient averments in the complaint to proceed against the present petitioner/A4 for the offence under Section 138 of the Negotiable Instruments Act and the proceedings cannot be quashed at this stage.

6.Heard the learned counsel on either side and perused the entire materials available on record.

7.As rightly pointed out by the learned counsel for the respondent, admittedly, in an earlier complaint filed under Section 138 of the Negotiable Instruments Act, the petitioner is



a party to the compromise. Though much reliance has been placed on the documents to show that the present petitioner is not a Director, this Court is of the view that, since the documents have been obtained at a later point of time, it requires some proof, and it is for the petitioner/A4 to establish the same before the trial Court. It is a matter of evidence. The trial Court shall take note of the Articles of Association of the Company and other documents on the side of the petitioner to find out as to whether the present petitioner/A4 was actively involved in the affairs of the Company. However, at this stage, this Court is not inclined to quash the proceedings.

8. With the above observations, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petitions are closed.

9. At this juncture, the learned counsel appearing for the petitioner seeks indulgence of this Court to grant an order dispensing with the personal appearance of the petitioner. Accordingly, the personal appearance of the petitioner/A4 before the trial Court is dispensed with, except for receipt of copies, answering the charges, questioning under Section 313 Cr.P.C., passing of judgment, or on any other date as may be required by the trial Court.

10. The trial Court shall dispose the matter as expeditiously as possible, not later than a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

The Metropolitan Magistrate,
Fast Track Court (Magisterial Level) No.2,
Coimbatore.

Cr1.O.P.No.20241 of 2017

VG-II(CO)

RLP(20/12/2021)