



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.09.2021

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

CRL.O.P.NO.3643 OF 2017

AND

CRL.M.P.NOS.2647 AND 2648 OF 2017

K.Maheswari

.. Petitioner/3rd Accused

Vs.

1. V.Manjunathan

.. 1st Respondent/Complainant

2. M/s.Manjunather Knits
Rep. by Partner V.Kannan

3.V.Kannan

..1st & 2nd Respondents/Accused 1 & 2

Prayer:

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.288 of 2016 on the file of the Judicial Magistrate No.II at Tirupur and quash the same against the petitioner herein.

For Petitioner .. Mr.R.Krishna Prasad
for M/s.Sarvabhauman Associates

For R1 .. Mr.K.Myilsamy

ORDER

The present petition has been filed by the third accused in C.C.No.288 of 2016, on the file of the learned Judicial Magistrate No.II, Tirupur, seeking to quash the said Calendar Case.

2. The entire issue arises under Section 138 of Negotiable Instruments Act. There was a partnership firm namely M/s. Manjunather Knits at Tirupur. There were three partners. They were the defacto complainant, V.Manjunathan, the second accused, V.Kannan and the present petitioner/third accused,



K.Maheswari/wife of V.Kannan.

3. Owing to various circumstances, the defacto complainant moved away from the partnership firm. Naturally, there has got to be settlement of accounts towards that end. The second accused, V.Kannan appears to have issued a cheque from his bank account. Since that cheque returned dishonour, the defacto complainant found it necessary to lodge a complaint alleging that offence under Section 138 of Negotiable Instruments Act. That complaint had been taken on file by the learned Judicial Magistrate No.II, Tirupur.

4. The present petition has been filed by the third accused/wife of the signatory to the cheque/second accused, claiming innocence and ignorance of the very fact of issuance of the cheque and therefore, seeking indulgence of this Court.

5. It is the contention of the learned Counsel for the petitioner that this petitioner/A3 was not at all involved in day to day activities of the partnership firm. The cheque was not issued for, on behalf of the partnership, but, that the cheque was issued only for the nefarious activities of the second accused and the present petitioner has been unnecessarily dragged into facing a torturous trial before the learned Judicial Magistrate No.II, Tirupur.

6. The learned Counsel for the petitioner, therefore, urged that this petitioner should be exonerated of all the charges and the Calendar Case should be quashed, insofar as this petitioner is concerned.

7. The fact that, all the three, namely, the second accused, the petitioner/third accused and the defacto complainant, at one point of time, started the partnership firm, is an admitted position. The further fact that the defacto complainant moved away from the partnership firm is also an admitted position. Naturally, a settlement had to be effected to pay the outgoing partner his share either from the profits or assets of the partnership firm or for his share of the capital, which he had invested into the partnership firm.

8. This particular portion which he had invested or his profits or his share in the assets would have to be paid out from the firm's account and there would be a liability on both the existing partners to pay out the outgoing partner. The cheque issued by the second accused would contain the amount, which also included the share of the present petitioner herein. Therefore, this issue can only be addressed during the course of trial.



9. Let the learned Judicial Magistrate No.II, Tirupur be not influenced by any of the observation made herein, but, let the learned Judicial Magistrate, during the course of analysing the evidence, determine whether the present petitioner was either directly or indirectly involved in the issuance of the cheque or even had a direct or indirect interest over the amount mentioned in the said cheque, and whether that particular amount comprised her share to be paid out to the outgoing partner. These are all the issues which can be determined only during the course of trial and the trial is the only answer.

10. This Court, in the absence of any terms of the arrangement among the partners, cannot come to any conclusion either to the advantage of the petitioner or to the disadvantage of the defacto complainant. Both will have to go back to the trial Court and agitate the issues there.

11. With the above said observations, the present Criminal Original Petition is dismissed, reiterating that the obligation is placed on the learned Judicial Magistrate, to examine the issues purely on the basis of the evidence let in, and not on any of the observations made by this Court. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

grs/kbs

To

1. The Judicial Magistrate No.II,
Tirupur.
2. The Chief Judicial Magistrate
Tirupur.

+1cc to M/s.Sarvabhauman Associates, SR.NO.50271(09/11/2021)
+1cc to M/s.K.Myilsamy, Advocate SR.NO.50078(09/11/2021)

Crl.O.P.No.3643 of 2017
and Crl.M.P.Nos.2647 and 2648 of 2017

GJ(CO)
PM/25/10/2021