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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CrI. O.P. Nos.26174 of 2017
and CRL.M.P.Nos.15053 &15054 of 2017

Mrs.Sumathi K.Prasath

...Petitioner

Vs.

Mr.V.Palanisamy (Deceased)

Represented by his legal heirs vide order dated 21.08.2017
of Hon'ble Judicial Magistrate, Udumalpet

1.Mrs.Damayanthi

2.Mrs.Selvi

3.Mr.Ramesh

4.Ms.Nithya

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records and quash the complaint in C.C.No.356 of 2006 now pending before the learned Judicial Magistrate-I, Udumalpet.

For Petitioner : Mr.B.Natarajan

For Respondents : Mr.P.M.Duraisamy

ORDER

This petition has been filed to quash the proceedings under Section 138 against the petitioner herein mainly on the ground that there is no averments made in the complaint to the effect that the present petitioner is the incharge or responsible over the company affairs at the relevant point of time. The A2/Managing Director borrowed money from the complainant and when pressed for repayment, he issued the cheques of the A1 company.

2. The brief facts of the case leading to filing of the complaint is that the accused 2 is the family friend to defacto complainant and he has borrowed a total sum of Rs.2,00,000 /- (Rupees Two Lakhs only) on various occasions for the benefit and improvement of accused No.1 company and executed a promissory settlement. Thereafter, he issued the impugned cheques for a total sum of Rs.2,00,000/- with the knowledge of accused 3 and 4, who are the Directors of accused No.1 company. Hence, private complaint has been filed



after complying the mandatory provisions for the initiation of the complaint under Section 138 of the Negotiable Instruments Act.

3. It is the contention of the learned counsel for the petitioner that the allegations itself clearly indicates that the amount has been borrowed only by the 2nd accused in his individual capacity. There is no averment as to the role of the others, particularly, the petitioner herein in respect of the borrowal or issuance of the cheque. In the absence of any pleadings in the complaint as to the role of the present petitioner, she cannot be prosecuted for the offence under Section 138 of Negotiable Instruments Act.

4. The learned counsel for the respondent submitted that there are necessary averments in the complaint to show that the petitioner is involved in the issuance of cheque and also is the incharge of the company. Hence, because of mere non-reproduction of the words under Section 141 of the N.I. Act, it cannot be said that the present petitioner cannot be prosecuted for the offence at all. Whether all the directors are incharge or at the helm of the affairs of the company is a matter of evidence. Therefore, at this stage, the complaint cannot be quashed.

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

6. On a perusal of the complaint, it indicates that the amount has been borrowed personally by the accused 2 since there is a friendly relationship between the defacto complainant and 2nd accused. Except contending that the issuance of the cheque is also by the 2nd accused, as against the other directors, there is no serious allegation made out as to their role in day to day affairs of the company. Therefore, merely making some allegations that they are also administering the company without making the necessary pleadings that they have a specific role in the administration of the company, as a matter of right, they cannot be prosecuted. Since, the penal action is very severe in nature, there must be necessary averments to proceed against a person for penal action. In this regard, the judgment of the Hon'ble Apex Court reported in 2009(3) SCC (Cri) 23 in the case of Ramrajsingh Vs State of M.P reads as follows:

8. To launch a prosecution against the alleged Directors of a company, there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are incharge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need



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not be reproduced and the Court can always come to a conclusion in facts of each case. But still in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable.

7. When the complaint is scanned by this Court, the amount itself is borrowed by A2. Though, it is stated that it for the uplift of the company, except stating that the other directors were incharge of the company at the time of issuance of the cheque, the specific role played by them in the affairs of the company has not been narrated. In such view of the matter, continuation of the prosecution against the present petitioner is against the well settled provision of law. Accordingly, the proceedings against this petitioner alone is quashed and as a sequel, this Criminal Original Petition is allowed. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

msv/nr

To

The Judicial Magistrate-I,
Udumalpet.

+1cc to Mr.P.M.Duraisamy, Advocate SR. No.64695

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RGN (CO)
PR (24/01/2022)