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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2022

CORAM:

THE HONOURABLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.No.2249 of 2021
and
Crl.MP.No.1233 of 2021

Vijaya Arun

... Petitioner

-Vs-

M/s.Ambal Agencies
Rep. by its Power Agent Mr.K.Ramesh Babu,
S/o.Veeraraghavalu,
No.63, Thattankullam Road,
Madhavaram, Chennai-600 060. ... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, praying to call for the records in C.C.No.2166 of 2019 dated 16.09.2019 pending on the file of the FTC-4, Metropolitan Magistrate, George Town, Chennai and quash the same against the petitioner/3rd Accused.

For Petitioner : Mr.Nithyaesh Natraj

For Respondent : Mr.Paramasivadoss
for Ms.R.Meenakshi Devi

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ORDER

This Criminal Original Petition has been preferred to call for the records pertaining to C.C.No.2166 of 2019 dated 16.09.2019 on the file of the learned Metropolitan Magistrate, FTC-4, George Town, Chennai and quash the same as illegal.

2. The petitioner is the third accused in this case. The respondent/complainant has initiated a proceedings under Section 138 of The Negotiable Instruments Act, 1881 by filing a private complaint. On the complaint given by the respondent, a case has been registered against four accused. The first accused is M/s.Sargam Metals Private Limited, which is represented by its Managing Director. The second accused is Mr.Sarathi Arun, the third accused, who is the petitioner herein, is one of the Directors and the fourth accused is also a Co-Director by name Mr.Sundarachari Varadachari. It is alleged by the respondent-complainant that the cheque dated 09.07.2019, which was issued by the first accused, was presented with the respondent's Bank (Axis Bank, George Town, Chennai) on 09.07.2019 and the same was dishonoured for the reason "Account Closed". After getting the return Memo dated 21.07.2018 and after complying the statutory formalities, the respondent has filed a complaint against the accused 1 to 4 under Section 138 of The Negotiable Instruments Act, 1881.

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3. Heard the learned counsel for the petitioner and the learned counsel for the respondent. Perused the materials available on record.

4. The learned counsel for the petitioner submitted that the petitioner, who is the third accused, is only a Co-Director and while impleading the Co-Directors other than the Managing Directors as parties to the proceedings under Section 138 of The Negotiable Instruments Act, the respondent/complainant ought to have made specific averments for showing how the Co-Directors are responsible for the conduct of the business and the Co-director has also been impleaded as party to the proceedings for the dishonour of the cheque issued in the name of the Company. In support of his above contentions, he relied on the judgment of this Court held in Crl.OP.Nos.5, 8 & 11 of 2020 and Crl.OP.No.10424 of 2022. It is further submitted that the principles laid down in the above judgement has been followed by the High Court in similar such occasions. In fact, for the very same reason, the complaint filed under Section 138 of The Negotiable Instruments Act against the very same co-director got quashed in the earlier orders in Crl.OP.Nos.5, 8 & 11 of 2020 and Crl.OP.No.10424 of 2022.

5. The learned counsel for the respondent submitted that the petitioner/A3 is also liable to pay the cheque amount which was issued to discharge the liability incurred by virtue of a Memorandum of Understanding

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executed between the respondent and the accused. It is submitted that in the said Memorandum of Understanding, the Managing Director and other Directors have agreed about their personal liabilities and responsibility to pay the entire dues along with interest. In support of his contentions he relied upon the judgment of the Hon'ble Supreme Court in ***S.M.S.Pharmaceuticals Ltd., Vs. Neeta Bhalla and Another [(2005) 8 SCC 89]***. Since the first accused is the Company and a private complaint under Section 138 of The Negotiable Instruments Act has been given by the respondent for the offence committed by the Company, a direct reference shall be made to Section 141 of the Negotiable Instruments Act, which reads as under:-

> "***141.(1)*** *Offences by companies. If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly."*

6. In similar such cases filed against the very same Company by some other complainants, the case against this accused alone is quashed. In this connection, following the order passed in Crl.OP.Nos.5, 8 & 11 of 2020 dated 18.08.2020, this Court has chosen to quash the proceedings against the very same petitioner for the similar allegation of dishonour of cheque committed by

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the Company. A reference was made to the various judgments of the Hon'ble Supreme Court held in this regard. This Court has relied on the following judgments of the Hon'ble Supreme Court:-

1. ***National Small Industries Corporation Limited Vs.Harmit Singh Panital and another [(2010) 3 SCC 330].***
2. ***N.K.Wahi Vs. Shekhar Singh & Ors [(2007) 9 SCC 481***
3. ***Pooja Ravinder Devidasani Vs. State of Maharashtra and another [(2014) 16 SCC 1]***
4. ***Ashoke Mal Bafna Vs. M/s.Upper India Steel Mft & Engg Co. Ltd [(2017) SCC OnLine SC 705]***

7. In the above said judgments, it is held that to include a Managing Director as a party to the criminal proceedings initiated under Section 138 of the Negotiable Instruments Act, it is not necessary for the complainant to state that the person, who was in-charge, is responsible of the conduct of the business. So far as the other directors are concerned, it is obligatory on the part of the complainant to make specific averments as to how the other director is directly responsible or in-charge for the conduct of the business and how criminal liability can be fastened against him. It is not necessary for the complainant to state that the Managing Director has been impleaded because he

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was responsible for the affairs of the Company. Because it is a known fact. While impleading the other co-directors, he should specifically state how the other directors are in-charge or responsible for the cheque issued on behalf of the Company. No doubt the directors are jointly and severally liable for actions initiated for the recovery of the dues from the company. Even in the Memorandum of Understanding, it is agreed by the Company and the other accused that they are jointly and severally liable to pay the liability as agreed therein. But in the complaint filed by the respondent, there is no specific reason stated as to why the other directors like the petitioner has been impleaded along with the company and the Managing Director for the offence committed by the Company under Section 138 of Negotiable Instruments Act.

8. The learned counsel for the respondent submitted that the impugned cheque was given by the Company only towards the discharge of the amount as agreed in the Memorandum of Understanding and hence, the petitioner is also liable for the criminal action initiated against the Company. Even though a joint liability can be fixed upon the petitioner by virtue of the Memorandum of Understanding, it is the Managing Director who is at the helm of the affairs of the Company. The petitioner is not in the direct control of the affairs and functions of the Company. The petitioner need not be impleaded as a party to the proceedings initiated under Section 138 of The Negotiable Instruments Act,

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1881.

9. Since the complaint filed by the complainant does not disclose the said fact and the earlier order passed by this Court in similar such case in Crl.OP.Nos.5, 8 & 11 of 2020 would clearly show that the respondent is the person, who is responsible for the affairs of the company, but not the petitioner therein, I feel that the benefit of the earlier order should be extended to the case on hand also. By relying the judgment of the Hon'ble Supreme Court rendered in this regard, I feel that the case against the petitioner in C.C.No.2166 of 2019 dated 16.09.2019 pending on the file of the FTC-4, Metropolitan Magistrate, George Town, Chennai is liable to be quashed.

10. In view of the above discussions, this Criminal Original Petition is **allowed** and the proceedings in C.C.No.2166 of 2019 on the file of the FTC-4, Metropolitan Magistrate, George Town, Chennai is hereby quashed. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Speaking/Non Speaking order
kmi/jrs

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R.N.MANJULA, J,

jrs

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