



Crl. O.P. No.10424 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 5/7/2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.10424 of 2022

a n d

Crl.M.P.Nos.6241 and 6246 of 2022

Vijaya Arun

...

Petitioner

Vs

New Link Overseas Finance Limited
rep. By its Director
Mr.U.P.Prakasham
Mamatha Complex, Second Floor,
No.25 Whites Road, Royapettah
Chennai 600 014.

duly rep. By its Authorised Signatory
Mr.S.Rajam
General Manager.

...

Respondent

PRAYER : Criminal Original Petitions filed under Section 482 of Cr.P.C. to call for the records in C.C.No.797 of 2020 dated 3/2/2022 pending on the file of the Fast Track Court No.II, Metropolitan Magistrate, Egmore, Chennai and quash the same against the petitioner/third accused.

For Petitioner ... Mr.Nithyaesh Natraj

For Respondent ... Mr.N.Premkumar

Page No:1/6



ORDER

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This Criminal Original Petition has been filed to quash C.C.No.797 of 2020, dated 3/2/2022, pending on the file of Fast Track Court No.II, Metropolitan Magistrate, Egmore, Chennai, against the petitioner/third accused, for the offences punishable under Section 138 of the Negotiable Instruments Act.

2. The complaint has been filed on the ground that the first accused Company has availed financial assistance from the respondent. Towards the said financial assistance, three cheques were issued, which was signed by the fourth accused, who was the Authorised Signatory. When the cheque was presented for encashment, the same was returned dishonoured for the reason “Account closed”. After issuing statutory notice, complaint has been filed.

3. Heard Mr.Nithyaesh Natraj, learned counsel for the petitioner and Mr.N.Premkumar, learned counsel for the second respondent.

4. Learned counsel appearing for the petitioner submitted that the complainant should have specifically averred in the complaint that at the time



of offence, the petitioner was incharge and responsible for the conduct and business of the Company. Moreover, the respondent cannot presume that every Director of the Company knows about the transaction while fastening criminal liability as against the Director of the Company.

5. Learned counsel appearing for the petitioner further submitted that similar allegations were pressed against the present petitioner/A.3, which was already quashed by this Court in Crl.O.P.Nos.5, 8 and 11 of 2020, by an order, dated 18/8/2020 and the same has not been challenged so far. Hence submitted that the present complaint against the petitioner is also not maintainable in the eye of law.

6. The learned counsel appearing for the respondent submitted that when the statutory notice was issued, no reply was sent. If the reply has been sent indicating that they are not responsible for the day-to-day affairs of the Company, they would not have filed the complaint. He has also submitted that order of this Court, dated 18/8/2020, made in Crl.O.P.Nos.5, 8 and 11 of 2020 has not been challenged.



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7. Perused the entire complaint and the materials available on record.

8. It is well settled that to make all the persons liable under Section 141 of the Negotiable Instruments Act, it must be shown by the complainant that each of the Directors are active and responsible for day-to-day affairs of the Company. Without making a specific averment, criminal liability cannot be fastened. This view has been settled in a catena of decisions, particularly in NATIONAL SMALL INDUSTRIES CORPORATION LIMITED Vs. HARMIT SINGH PANITAL AND ANOTHER reported in (2010) 3 SCC – 330.

9. The Hon'ble Supreme Court has repeatedly held that the complaint has to specifically say as to how and in what manner Director was responsible for the conduct of the business of the Company. Moreover, the complaint should spell out as to how and in what manner, the accused was in charge of or was responsible to the Company for the conduct of this business. Simply because a person is a Director of a Company, does not make her/him liable under the said Act.



CrI. O.P. No.10424 of 2022

10. In such a view of the matter, complaint against A.3 cannot be maintained. It is also to be noted that similar allegations as pleaded in the present petition in CrI.O.P.Nos.5, 8 and 11 of 2020, as against the petitioner/A.3, this Court has already quashed the proceedings, vide, order dated 18/11/2020, which has not been challenged.

11. Accordingly, this Criminal Original Petition is allowed and the complaint taken on file in C.C.No.797 of 2020, pending on the file of the Fast Track Court No.II, Egmore is quashed, as against the present petitioner/A.3 alone. The trial Court shall proceed as against the other accused and expedite the trial within a period of six months, from the date of receipt of a copy of this order. Consequently, the connected Criminal Miscellaneous Petition Nos.6241 and 6246 of 2022 are closed.

5/7/2022

Index : Yes / No
Internet: Yes
Speaking/non speaking order

mvs.

Page No:5/6



Crl. O.P. No.10424 of 2022

N. SATHISH KUMAR, J

mvs.

To

1. The Fast Track Court No.II, Metropolitan Magistrate, Egmore, Chennai .

Crl. O.P. No.10424 of 2022

5/7/2022

Page No:6/6