



CrI.O.P.No.15199 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM:

**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

CrI.O.P.No.15199 of 2022  
and  
CrI.M.P.Nos. 8496 & 8497 of 2022

Shakvai Mumtaj Beham

.. Petitioner

Versus

M/s.United Enterprises  
Represented by its  
Managing Partner Mr.N.Srinivasan  
No.15/3, Bharathi Nagar, Ranipet  
Ranipet District – 632 403

.. Respondent

**PRAYER:** Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records in pursuant to the S.T.C.No.385 of 2020 pending on the file of Judicial Magistrate Court, Ranipet District.

For Petitioner

: Mr.T.R.Prabakaran

**ORDER**

This Criminal Original Petition has been filed seeking to quash the Chargesheet in S.T.C.No.385 of 2020 pending on the file of Judicial Magistrate Court, Ranipet District, for the offence under Section 138 read with Section



142 of Negotiable Instrument Act, 1881.

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2. The present petitioner has been filed to quash the cheque complaint in S.T.C.No.385 of 2020 mainly on the ground that the she is not a Director as alleged by the complainant, whereas, she has resigned from the post of Director following due process of law i.e., w.e.f. 15.02.2020. However, the cheques were issued only on 25.09.2022 pursuant to her resignation as a Director. Therefore, it is submitted that no complaint arraying her as accused is maintainable. Further submits that there is moratorium against the accused under Section 14 of the Insolvency and Bankruptcy Code, 2016 against the Company. Hence, submitted that complaint is not maintainable.

3. At the outset, I am unable to persuade myself to the submission of the learned counsel. In the case of ***P. Mohanraj and Others vs. Shah Brothers Ispat Pvt. Ltd.***, reported in ***[2021 SCC Online SC 152]***, after dealing with various judgements of the Apex Court in paragraph 103 held as follows:

*“103. Since the Corporate debtor would be covered by the moratorium provision contained in Section 14 of the IBC, by which continuation of Section 138/141 proceedings against the corporate debtor and initiation of Section 138/141 proceedings against the said debtor during the corporate insolvency resolution*



*process are interdicted, what is stated in paragraphs 51 and 59 in Aneeta Hada (supra) would then become applicable. The legal impediment contained in Section 14 of the IBC would make it impossible for such proceeding to continue or be instituted against the corporate debtor. Thus, for the period of moratorium, since no Section 138/141 proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Section 141(1) and (2) of the Negotiable Instrument Act. This being the case, it is clear that the moratorium provision contained in Section 14 of the IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act."*

As the moratorium applies to the Corporate Debtor, proceedings under 138/141 cannot continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Section 141(1) and (2) of the Negotiable Instrument Act. This being the case, it is clear that the moratorium provision contained in Section 14 of the IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under



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## Chapter XVII of the Negotiable Instruments Act.

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4. In such a view of the matter, the petitioner being the director of the company namely M/s.Saalim Shoes (P) Ltd, has to be prosecuted as per the above judgment.

5. Such view of the matter, the application to quash as against the petitioner is dismissed and at this stage, the learned counsel for the petitioner citing the age of the petitioner seeks exemption of personal appearance before the Trial Court. Considering the same, personal appearance of the petitioner before the Trial Court is dispensed with, except when called for in required circumstances, the petitioner shall be present on the date as fixed the Trial Court. However, the Trial Court is directed to dispose of the complaint in accordance with law.

6. In view of the above, this Criminal Original Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

05.07.2022

Index : Yes / No

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**N.SATHISH KUMAR, J.**

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To  
1.Judicial Magistrate Court,  
Ranipet District

2. The Public Prosecutor  
High Court, Madras.

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