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CRL.O.P (MD)



21

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.09.2022

PRONOUNCED ON : 14.10.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.3635 of 2021

and

CrI.M.P.(MD) No.2004 of 2021

Rachitha

...Petitioner / Accused No.3

vs

Selvin Bright
Complainant

...Respondent /

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records relating to CC.No.332 of 2021 pending on the file of the learned Judicial Magistrate, Valliyur and quash the same.

(Prayer has been amended vide order dated 09.04.2021 in CrI.M.P.(MD) No.2506 of 2021 in CrI.O.P.(MD) No.3635 of 2021)

For Petitioner : Mr.P.Dhanasekaran

For Respondent : Mrs.T.Swathi Sankaravatham

O R D E R

This Criminal Original Petition has been filed to quash the case in C.C.No.332 of 2021 on the file of the learned Judicial Magistrate, Valliyur.

2.The learned Counsel for the Petitioner would submit that the Petitioner, who is the wife of second accused, is arrayed as third accused. She is not a Partner or Director of the first accused's Company. Since the Petitioner is the wife of the second accused, she had been added as a party in the complaint, which was registered under Section 138 of Negotiable Instruments Act, 1881 by the Respondent. There is no specific averments against the Petitioner in the complaint preferred by the Respondent, which was taken cognizance in C.C.No.332 of 2021 by the learned Judicial Magistrate, Valliyur. The averments in the complaint show that there is no specific role against the Petitioner. Therefore, by no



stretch of imagination, the Petitioner can be made liable for prosecution.

3.It is settled law that a person, who issued the cheque in discharge of liability, is alone to be prosecuted under Section 138 of Negotiable Instruments Act, 1881. Here, the Petitioner had not issued any cheque. She was also not the Director of the first accused's Company. Even in the private complaint registered under Section 138 of Negotiable Instruments Act, 1881, the learned Counsel for the Respondent had not raised any averments as though the Petitioner herein, who is the third accused in the complaint, has overt acts. No criminal liability can be fixed on the Petitioner. Therefore, the learned Counsel for the Petitioner seeks to quash CC.No.332 of 2021 pending on the file of the learned Judicial Magistrate, Valliyur.

4.The learned Counsel for the Respondent vehemently objected to the submission of the learned Counsel for the Petitioner stating that the Petitioner has criminal liability accompanying the second accused/her husband, while seeking loan from the Respondent and also, she is a Partner of the first accused's Company. What are all submitted by the learned Counsel for the Petitioner is to be treated as a private defence of the Petitioner, which cannot be considered, when exercising the extraordinary powers under Section 482 of Cr.P.C. as per the reported ruling of the Hon'ble Supreme Court in the case of **State of Haryana vs.Ch.Bhajan Lal** reported in **(AIR) 1992 SC 604)**. Therefore, the learned Counsel for the Respondent seeks to dismiss this Petition.

5.On consideration of the rival submissions and on perusal of the complaint, copy of which is enclosed in the Petition to quash, it is found that except stating that the Petitioner herein is the wife of second accused, there is no specific overt acts either that she had issued the cheque or she signed in the cheque or she is the Partner or Director of the first accused's Company, who is In-charge of the day-to-day affairs of the Company. No such averments is found in the complaint.

6.As per Section 141 of the Negotiable Instruments Act, 1881, there shall be specific averments fixing the responsibility of the Director of the Company or Partner of the firm without which using the common words that they are liable will not be sufficient to convict or fix the responsibility on the accused regarding the offence committed by the accused. In the light of the reported ruling of the Hon'ble Supreme Court in the case of **S.M.S.Pharmaceuticals Ltd Vs. Neeta Bhalla and another**, wherein it had been held that a Director does not automatically become vicariously liable for offence committed by Company and liability of Director to be determined on the date of which the offence was committed. Therefore, the submission of the learned Counsel for the



Petitioner is accepted. The objection made by the learned for the Respondent is rejected.

7. In the result, this Petition is allowed. The private complaint pending on the file of the learned Judicial Magistrate, Valliyur in C.C.No.332 of 2021 is hereby quashed **(*)against the Petitioner/ Accused No.3 alone.**

(*)8. The learned Judicial Magistrate, Valliyur, is directed to proceed with the trial in C.C.No.332 of 2021 as against the other Accused and dispose of the same as per law. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

(*)Corrected as per order of this court dated 28.11.2022 made in CRL OP(MD)No.3653 of 2021

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/12/2022

Sub Assistant Registrar(CS)

To

(*)To be substituted to the order which was already despatched on 04.11.2022

1. The Judicial Magistrate,
Valliyur.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.SWATHI SANKARAVATHAM, Advocate (SR-49994[F] dated 18/10/2022)

CRL.O.P (MD) No.3635 of 2021

14.10.2022

MK(01.11.2022) 3P 4C

AMS(13.12.2022) 3P 4C