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Crl.O.P.No.5272 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.5272 of 2022

and

Crl.M.P.Nos.2843 & 2845 of 2022

Aishwarya Jayanthi
Wife of V.Sudhakaran
5050 H Block, 28th Street
Ponni Colony, Anna Nagar West,
Chennai 600 040.

.. Petitioner

Vs.

Vignesh & Co.,
Rep. by its Partner J.Babu
Having its office at No.245,
VGP Nagar, Muggapair West
Chennai 600 037.

.. Respondents

PRAYER: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for records relating to STC.No.187 of 2020 on the file of the Fast Track Court (Magisterial Level) at Ambattur and quash the same against the Petitioner.

For Petitioner : Mr.S.Kathiravan

For Respondent : Mr.N.Manokaran
for Mr.P.Krishnan



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ORDER

WEB COPY This Criminal Original Petition has been filed to call for records relating to STC.No.187 of 2020 on the file of the Fast Track Court (Magisterial Level) at Ambattur and quash the same against the Petitioner.

2.The Petitioner/Accused-3 in C.C.No.187/2020 facing trial on a private complaint filed by the Respondent for the offences u/s.138 & 141 of the Negotiable Instruments Act has filed this quash Petition.

3.The gist of the complaint is that the Petitioner is the Director of M/s.Merck Automobile along with her husband viz., V.Sudhakaran, Managing Director. A-1 is company, A-2 is her husband, A-3 is the Petitioner. Petitioner's company was involved in buying and selling of used luxury cars, who had issued an advertisement, thereby seeking for investment for their business. The nature of business of A-1 company is that they would buy used cars or cars, which are met with accident in auction from the finance companies at a lesser rates, then rectify the defects and thereafter sell it in the market. The profit made would be shared with the investors of the Respondent company. The Respondent company/ complainant had invested in seven cars to the tune of Rs.81,77,000/-. The Petitioner's company though had purchased seven cars,



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rectified and sold the same for profit, failed to make payment on a car to car basis and hence, had due of Rs.81,77,0000/-, for which it discharged a portion of liability towards part payment and gave four cheques to the tune of Rs.32,00,000/-. When the cheques were presented, the same were dishonoured. Thereafter, notice was issued, which was returned, following the procedure under Section 138 of NI Act, case has been filed before the trial Court.

4.The primary contention of the Petitioner is that the Petitioner is only a name lender, it is her husband A-2, who is carrying on the business of A-1 and actively taking part in the day to day activities. For sentimental reasons only, the Petitioner's name has been included and nothing more. Learned counsel for the Petitioner further submits that the entire business had been carrying out by her husband, the memorandum of understanding entered between the Respondent/complainant and the Petitioner's company has been signed by her husband and the Petitioner had not signed in any of the business documents.

5.Learned counsel for the Petitioner further submits that in this case, admittedly cheques have been signed by A-2 on behalf of A-1. No doubt cheques have been issued in the name of the A-1 company, there is no averment



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either in the complaint or in the sworn statement against the Petitioner, apart from the referring that the Petitioner is the Director of A1/company. In view of the same, the learned counsel for the Petitioner relying upon the judgment of the Hon'ble Apex Court in the case of ***S.M.S. Pharmaceuticals Limited vs. Neeta Bhalla and another*** reported in ***(2007) 4 SCC 70***, which has been consistently followed till date by the Hon'ble Apex Court as well as this Court in many of the Judgment, wherein it has been clearly held that merely being a Director of a company would not sufficient to make the person liable u/s.141 of the NI Act and in the complaint apart from being the Director specific role played by the Accused/Director have to be stated. In this case, there is no such averments.

6.Mr.N.Manokaran, learned counsel appearing for the second Respondent/Complainant submitted that the Petitioner by conduct would clearly prove that she had been actively involved in the business of A-1/company. The Petitioner had not denied that she is not the Director of the A-1/company. Now she tries to wriggle out from the case, on technical plea. Factually, the Petitioner had been actively taking part in the business right from beginning and the scheme has been well devised by the Petitioner. Hence though she had actively participated in the business, it seems that she had not



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signed any documents and now taking the same as advantage, projecting that she is only a name lender. The points raised by the Petitioner are to be decided during the trial and opposed this Petition.

7.Learned counsel for the Respondent further submits that the Petitioner is yet to cross examine the witnesses and put forth the defence. In such circumstances, the Petitioner now taking advantage of averments not available, cannot be considered at this stage. The Respondent had lost around Rs.81,75,000/- in the business. The cheques involved is only a part amount, to tune of Rs.35,00,000/- and opposed the Petition.

8.Learned counsel for the Respondent further submits that in this case, though the complaint was filed under Section 138 of NI Act in the year 2020, for the past three years the case has been kept pending, for one reason or other and sought direction to the trial Court to complete the trial within a stipulated period.

9.Considering the submissions made by the learned counsel on either sides and perusal of the materials, I find that in the complaint at paragraph 12, invoking section 141, it is refereed that A-3/Petitioner is aware of dealings and



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payments. But in the sworn statement, the above averments is missing.

Further in the MoU entered between the A-1 & A2 on 16.03.2019, the Petitioner has not signed the same. The MoU forms part of the complaint. It refers to in the complaint at paragraph 3.

10. In view of the above, I find that there is no averments to show that the Petitioner has actively taken part in the day to day affairs of A-1/company and following the Hon'ble Apex Court's judgment in the case of ***S.M.S. Pharmaceuticals Limited vs. Neeta Bhalla and another*** reported in ***(2007) 4 SCC 70***, which is consistently followed by this Court, this Court is inclined to accept the contention of the Petitioner. In view of the same, complaint in S.T.C.No.187 of 2020, on the file of the Fast Track Court (Magisterial level) at Ambattur as against A-3 alone is quashed.

11. It seems that in STC.No.187 of 2020 on the file of Fast Track Court (Magisterial level) at Ambattur, there is only one witness and chief examination of the said witness is completed. There are no other witnesses. Hence, the trial court is directed to complete the trial within a period of three months from the date of receipt of a copy of this order.



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12.With the above direction, this Petition is allowed. Consequently,

connected Miscellaneous Petitions are closed.

27.06.2023

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Index : Yes/No

Neutral citation : Yes/No

Speaking order/Non-speaking order

To

1.The Fast Track Court (Magisterial Level)

Ambattur

2.The Public Prosecutor,

High Court of Madras.



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M.NIRMAL KUMAR, J.

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