IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.No.4546 of 2021 and
Crl.MP.Nos.2910 & 2912 of 2021

Anny Johnson ... Petitioner/A3

Vs.

1.M/s.Small Industries Development Bank of India,
Rep. By its Authorised Representative
V.Chandramouli, Deputy General Manager,
756 L, Overseas Towers,
Anna Salai, Chennai 600 002
2.St.John Freight Systems Limited,
(CIN:U74200TN1991PLC020999)
Represented by its Managing Director,
C-98, SIPCOT Industrial Complex,
Harbour Express Road,
Tuticorin 628 008
3.Thangiah Johnson
4.Samuel J.Jeffson
(R2 to R4 deleted as per order in
Crl.OP.No.4546 of 2021 and Crl.MP.No.2912 of 2021
dated 08.03.2021) ... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to CC.No.240 of 2018 pending on the file of Fast Track Court-III, Saidapet, Chennai and to quash the same.

For Petitioner : Mr.P.K.Shrinivasan

For Respondents

For R1 : No appearance

R2 to R4 : Deleted vide order dated 08.03.2021

ORDER

This criminal original petition has been filed to quash the proceedings in CC.No.240 of 2018 pending on the file of Fast Track Court-III, Saidapet, Chennai.

2. The first respondent filed complaint for the offence punishable under Section 138 of NI Act alleging that the accused raised a request to borrow loan from the first respondent a term loan of Rs.10 crores by the application dated 16.12.2013. Thereafter, the said loan was sanctioned in favour of the first accused company in which all the directors signed on behalf of the first accused company. The said loan was availed for the purpose of meeting the Working Capital margin money requirement for the financial year 2015. The accused also agreed to repay the said loan with interest at the rate of 0.25 % above the prime lending rate of the first respondent and so the interest payable by the accused at the time of sanction was 13% per annum. They specifically agreed to repay the loan by 72 monthly instalments comprising of Rs.13,89,000/- per instalment. The first accused company represented by the

second accused entered into an agreement for loan dated 23.04.2014. However, they failed to repay the said instalments as agreed by them from 10.03.2015. They committed continuous default. The demand was made by the respondent under loan recall notice issued to the accused to the tune of Rs.9,99,35,473/-. On receipt of the same, in order to discharge their liabilities, the accused had issued eight cheques each for a sum of Rs.25,00,000/-. All the cheques were presented for collection and the same were returned dishonoured for the reason 'funds insufficient'. After causing statutory notice, the respondent lodged complaint for the offence punishable under Section 138 of NI Act.

3. Though notice was served on the first respondent and his name is also printed in the cause list, no one appeared before this Court on behalf of the first respondent either in person or through pleader.

4. The petitioner is arrayed as the third accused. Admittedly, she is one of the Directors. On perusal of the complaint, revealed that the second accused represented on behalf of the first accused company. He only entered into loan agreement with the first respondent on 23.04.2014. Though the other Directors signed accepting the sanction order, the role of the petitioner is not

stated in the complaint. Except in the long cause title of the complaint, nothing whispered about the role played by the petitioner in the day to day affairs of the company and also in the process of loan availed by the first accused company. Further, the petitioner is not signatory of the instrument and she has been implicated as an accused without any basis. She has been implicated as accused only because she is also one of the Directors of the first accused company. If a Director is implicated as an accused, the first respondent ought to have satisfied the provision under Section 141 of NI Act. It clearly says that there must be specific allegations as against the accused person in a complaint and in the absence of which, the same is unsustainable. The petitioner is not in charge and not responsible for the conduct of the business and the petitioner has been made Director since she is the wife of the second accused for satisfying the requirement for registration of the company. She is being house wife, she is nothing to do with the day to day affairs of the company and she had not involved in the affairs of the company.

5. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India in the case of ***Sunita Palita and Others Vs. Panchmi Stone Quarry*** reported in ***(2022) 10 SCC 152***, wherein it is held as follows:

35. *The High Court rightly held that when a complaint was filed against the Director of a company, a specific averment that such person was in charge of and responsible for the conduct of business of the company was an essential requirement of Section 141 of the NI Act. The High Court also rightly held that merely being a Director of the company is not sufficient to make the person liable under Section 141 of the NI Act. The requirement of Section 141 of the NI Act was that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company. This has to be averred as a fact.*

42. Liability depends on the role one plays in the affairs of a com- pany and not on designation or status alone as held by this Court in S.M.S. Pharmaceuticals Ltd. (supra). The materials on record clearly show that these Appellants were independent, non-executive Directors of the company. As held by this Court in Pooja Ravinder Devidasani v. State of Maharashtra and Anr. (supra) a non-Exec- utive Director is not involved in the day-to-day affairs of the company or in the running of its business. Such Director is in no way responsi- ble for the day-to-day running of the Accused Company. Moreover, when a complaint is filed against a Director of the company, who is not the signatory of the dishonoured cheque, specific averments have to be made in the pleadings to substantiate the contention in the complaint, that such Director was in charge of and responsible for conduct of the business of the Company or *the Company, unless such Director is the designated Managing Director or Joint Managing Director who would obviously be responsible for the company and/or its business and affairs.*

45. As held by this Court in National Small Industries Corporation Ltd. v. Harmeet Singh Paintal4 quoted with approval in the subsequent decision of this Court in Pooja Ravinder Devidasani v. State of Maharashtra and Anr. (supra) the impleadment of all Directors of an Accused Company on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company, without anything more, does not fulfil the requirements of Section 141 of the NI Act.

6. On perusal of the complaint lodged by the first respondent, nowhere stated about the specific role played by the petitioner on behalf of the first accused company. There must be specific allegations in order to meet out the requirements under Section 141 of NI Act. The petitioner is not one of the Executive Directors of the company. She is not involved in the day to day affairs of the company and in running of the business. Such Director is no way responsible for the day to day running of the accused company. Moreover, when a complaint is filed against a Director of the Company who is not signatory of the dishonoured cheque, specific averments have to be made in

the pleading to substantiate the contention in the complaint that such director was in charge of and responsible for the conduct of the business of the company or the company, unless such Director is the designated Managing Director or Joint Managing Director who would obviously be responsible for the company and/or its business and affairs. In the case on hand, the petitioner is non executive director and she never involved in the day to day affairs of the company even according to the first respondent. There is no averments made in the complaint that the petitioner involved in the day to day affairs of the company and its business. Further, the second accused only entered into loan agreement with the first respondent on behalf of the first accused. Therefore, the above judgment is squarely applicable to the case on hand. As such, the complaint lodged by the first respondent as against the petitioner cannot be sustained and it is liable to be quashed.

7. Accordingly, the entire proceedings in CC.No.240 of 2018 pending on the file of Fast Track Court-III, Saidapet, Chennai is quashed only as against the petitioner and this criminal original petition is allowed. The trial court is directed to proceed with the trial as against the other accused persons and complete the same within a period of six months from the date of receipt

of copy of this order. Consequently, connected miscellaneous petitions are closed.

09.10.2023

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

To

1.Fast Track Court-III,
Saidapet, Chennai
2.V.Chandramouli,
Authorised Representative,
Deputy General Manager,
M/s.Small Industries Development Bank of India,
756 L, Overseas Towers,
Anna Salai, Chennai 600 002

G.K.ILANTHIRAIYAN, J.

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