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Crl OP No. 20474 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2023

CORAM :

THE HONOURABLE **MR. JUSTICE SUNDER MOHAN**

Crl.O.P.No.20474 of 2019
and Crl.M.P.No.10524 of 2019

Mamta Gauba

... Petitioner

Vs.

1.M.J.Shankar

(Respondents 2 to 5 are unnecessary parties in this petition and their names are deleted as per order in Crl.O.P.No.20474 of 2019 and Crl.M.P.Nos.10524 & 10525 of 2019 dt.31.07.2019)

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in C.C.No.854 of 2018 on the file of the Fast Track Court No.3, Magistrate Level, Saidapet, Chennai 600 015 as against the petitioner who is arrayed as 3rd accused in the said case and quash the same.

For Petitioner : Mr.Mariappan K.A.

For Respondent : Mr.J.Rajith Kumar for R1



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ORDER

This petition has been filed seeking to call for the records in C.C.No.854 of 2018 on the file of the Fast Track Court No.3, Magistrate Level, Saidapet, Chennai 600 015 as against the petitioner who is arrayed as 3rd accused and quash the private complaint filed under Section 138 of Negotiable Instruments Act.

2.The petitioner herein has been shown as A3 in the said complaint. It is alleged that the 1st accused, a partnership firm had issued a cheque for Rs.3,75,000/- in favour of the respondent herein towards the discharge of their liability. When the said cheque was presented for collection, the same has been returned with an endorsement “funds insufficient”. Thereafter, a statutory notice was sent but the accused did not make any payment. Hence the complaint.

3.The petitioner herein is arrayed as A3 in the said private complaint and she is prosecuted in her capacity as a Director of the partnership firm. The allegation against the petitioner is that at the relevant point of time she was incharge and responsible for the company and she was actively involved in the day to day affairs of the firm.



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4.Learned counsel for the petitioner would submit that apart from the bald allegations that she was also involved in the business, there is no specific allegation as to how she is responsible for the said business and conduct of the 1st accused company. The learned counsel added that the company is run by her husband and on account of matrimonial differences between the 1st accused and the petitioner, divorce petition was filed in H.M.A.No.10 of 2016, on the file of the learned District Judge, Gurdaspur. In the said petition filed by the husband, the Court has granted the decree of divorce on 12.03.2018. In the said judgment, it is stated that the petitioner and her husband have been living separately for several years. The above would go to show that the petitioner was not incharge of the day to day affairs of the company. In fact, there was also a criminal case filed by her husband against this petitioner on 13.10.2016, which was dismissed on 04.07.2017, by the learned Judicial Magistrate, Gurdaspur. All these would go to show that there was a strained relationship between the petitioner and her husband and that the petitioner could not be incharge the day to day affairs of the company.

5.Learned counsel for the complainant would submit that there are other allegations also in the complaint, which would be sufficient to



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prosecute the petitioner. The petitioner was involved actively in the affairs of the company on day to day basis and the subject cheque was issued to the complainant only on her approval and hence she is liable to be prosecuted for the offence punishable under Section 138 of Negotiable Instruments Act.

6.This Court finds that apart from the bald allegations in the complaint that the petitioner was actively involved in the day to day business of 1st accused company, there is nothing in the impugned complaint to show in what manner she was in charge and responsible to the conduct of the business of the 1st accused company to invoke Section 141 of the Negotiable Instruments Act. Further, the documents filed by the petitioner to show that the petitioner and her husband got divorce and that the relationship between them is a strained one cannot be justifiably refuted by the respondent / complainant. The Hon'ble Supreme Court in the Judgment of ***S.P.Mani and Mohan Dairy vs. Dr.Snehalatha Elangovan*** reported in ***2022 SCC online SC 1238*** held as follows:

“47. Our final conclusions may be summarised as under:

a.) The primary responsibility of the



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complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to subsection (1) of [Section 141](#) of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

b.) The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role



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they had played in the company or the partners in a firm to show before the court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to [Sections 138](#) and [Section 141](#) respectively of the [NI Act](#) shows that on the other elements of an offence under [Section 138](#) being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.

c.) Needless to say, the final judgement and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners 'qua' the firm. This would



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make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.

d.) If any Director wants the process to be quashed by filing a petition under [Section 482](#) of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court.

7. In the instant case, we find that the petitioner has shown that she is not really concerned with the issuance of cheque by showing that she has divorced her husband and the relationship between her and her husband was strained on account of some criminal cases which was filed against her. Paragraph (d) in the aforesaid passage would squarely apply to the facts of the instant case.



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WEB COPY 8. For all the above said reason, the impugned complaint as against the petitioner alone stands quashed. However, the learned Judicial Magistrate is hereby directed to expedite the trial in respect of all the other accused and complete the trial proceedings within a period of six (6) months from the date of receipt of a copy of this order.

9. This Criminal Original Petition stands allowed accordingly. Consequently, the connected petition is closed.

17.03.2023

kas/dk

Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No



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To

1.The Fast Track Court No.3,
Magistrate Level,
Saidapet,
Chennai 600 015

2.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.



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SUNDER MOHAN, J.

kas/dk

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