IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

CORAM:

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

CRL.O.P.No.25719 of 2021 and
Crl.M.P.Nos.14270 & 14271 of 2021

1.S.Anitha
2.S.Saravanan ... Petitioners/A4&5

Vs.

P.R.Manogaran ... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records in STC.No.761 of 2021 on the file of the learned Judicial Magistrate No.1, Tirupathur, Vellore District and to quash the proceedings as against the petitioners.

For Petitioners : Mr.A.Nagarajan
for Mr.K.R.Ramesh Kumar

For Respondent : Mr.G.Vinodh Kumar

ORDER

This criminal original petition has been filed to quash the proceedings in STC.No.761 of 2021 on the file of the learned Judicial Magistrate No.1, Tirupathur, Vellore District taken cognizance for the offences under Sections 138 & 142 of Negotiable Instruments Act, 1988 as against the petitioners.

2. The respondent is the complainant and he filed complaint to prosecute the accused for the offences punishable under Section 138 of NI Act. The crux of the allegations are that the accused had started various business activities under the name and style of M/s.Safelife Agrotech India Private Limited. It is a company. The respondent had deposited a sum of Rs.50,00,000/- with the first accused towards advance amount for distribution and selling of Activa Milk in Vellore District. It was running smoothly and all of sudden, the first accused had stopped production of milk. Therefore, the supply was disconnected and the respondent demanded advance amount paid with the first accused. Towards repayment of the advance amount, the Directors i.e. the second and the third accused had signed a cheque on behalf of the first accused and issued for a sum of Rs.50 lakhs. It was presented for collection and the same was returned for the reason 'account blocked'. Immediately after causing statutory notice, the respondent lodged complaint.

3. The learned counsel for the petitioners would submit that the petitioners are arrayed as A4 and A5. Even according to the respondent, the

first accused is a company and the cheque was signed and issued by the second and the third accused being Directors of the company. Initially, the first petitioner was inducted as Director and subsequently, she had resigned from her directorship and accordingly, Form 32 was filed before the Registrar of Companies and the same was duly accepted by the Registrar of Companies, thereby she was ceased to be a director of the first accused company from 15.01.2013. As far as the second petitioner, he is only a shareholder and he is not a Director even according to the respondent. Therefore, they are no way connected with the first accused and they are not liable to be punished vicariously for the offence committed by the first accused.

4. The learned counsel for the respondent would submit that the name of the first petitioner is completely different from the name appeared in Form 32 filed before the Registrar of Companies. The second petitioner is also one of the Directors of the first accused company. The grounds raised by the petitioners can be considered only before the trial court during the trial by letting in evidence.

5. Heard, the learned counsel appearing on either side.

6. On perusal of the records, revealed that there are totally eight

accused, in which the petitioners are arrayed as A4 & A5. The first accused is the company and the alleged cheque was signed by A2 and A3 who are being Directors. The respondent paid a sum of Rs.50 lakhs as advance for distribution and selling of Activa Milk in Vellore District. However, the business was stopped and as such, in order to repay the said amount, the first accused company issued a cheque signed by A2 and A3 who are being Directors. As far as the petitioners are concerned, the first petitioner had resigned her directorship from 15.01.2013 and accordingly, Form 32 has been filed before the Registrar of Companies. It is a part and parcel of the records. Insofar as the second petitioner, he is only a shareholder and he never became a Director of the first accused Company. Therefore, they are not vicariously liable for the cheque issued by the first accused company. Hence, the entire proceedings initiated in STC.No.761 of 2021 for the offence punishabe under Sections 138 and 142 of NI Act cannot be sustained as against the petitioners and it is liable to be quashed.

7. Accordingly, the entire proceedings in STC.No.761 of 2021 on the file of the learned Judicial Magistrate No.1, Tirupathur, Vellore District is quashed as against the petitioners alone and this Criminal original petition is allowed. The trial court is directed to proceed with the trial as against the other

accused persons. Consequently, connected miscellaneous petitions are closed.

17.10.2023

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

To

The learned Judicial Magistrate No.1,
Tirupathur, Vellore District

G.K.ILANTHIRAIYAN, J.

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CRL.O.P.No.25719 of 2021

17.10.2023