



Crl.O.P.Nos.30585 & 9940 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. Nos. 30585 & 9940 of 2019

and

Crl.M.P. Nos. 5173, 16580 & 16582 of 2019

Crl.O.P. No.30585 of 2019:

1.Lavanya

2.Kasi Viswanathan

... Petitioners

Vs.

M/s.Sarvesh Exports,
Partnership Firm,
No.54/39, Kangayam Main Road,
Near Rakiyapalayam Pirivu,
Tirupur – 641 606.
Rep. by their Power of Attorney Holder and CEO
Mr.R.Dinesh
S/o. P.Rathinasamy

... Respondent



Crl.O.P.Nos.30585 & 9940 of 2019

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in S.T.C.No.698 of 2019 pending on the file of Judicial Magistrate No.1, Tirupur and quash the complaint.

For Petitioners : Mr. R.Vijayaraghavan

For Respondent : Mr. R.Baskar

Crl.O.P.No. 9940 of 2019:

Tamilmozhi

... Petitioner

Vs.

M/s.Sarvesh Exports,
Partnership Firm,
Having its place of business at,
Door No.5/39, Kangayam Main Road,
Near Rakiyapalayam Pirivu,
Tirupur – 641 606.
Rep. by their Power of Attorney Holder and CEO
Mr.R.Dinesh
S/o. P.Rathinasamy

... Respondent



Crl.O.P.Nos.30585 & 9940 of 2019

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PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in S.T.C.No.698 of 2019 pending on the file of Judicial Magistrate No.1, Tirupur and quash the complaint.

For Petitioners : Ms. K.Kalpana

For Respondent : Mr. R.Baskar

ORDER

The petitions are filed to quash the complaint for the offence under Section 138 of the Negotiable Instruments Act in S.T.C.No.698 of 2019

2. The petitioners in Crl.O.P.No.30585 of 2019 are arrayed as A3 and A5 respectively, in the complaint. The petitioner in Crl.No.9940 of 2019 is arrayed as A4 in the impugned complaint.



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3. It is alleged in the complaint that the 1st accused company for discharging its liability had issued a cheque in favour of the complainant; that when the said cheque was presented for collection of money, it was returned for the reason “*insufficient funds*” and inspite of statutory notice being issued to the accused, the accused did not make any payment. Hence, the impugned complaint has been filed.

4. The learned counsel for the petitioners would submit that in so far as the petitioner in Crl.O.P.No.9940 of 2019 is concerned there is an incontrovertible document stating that she suffers 90% disability. The said document is a Disability Certificate issued by the Government of Tamil Nadu, which shows that the petitioner in Crl.O.P.No.9940 of 2019 suffers from 90% disability. The said document would show that she could not have been incharge of and responsible to the 1st accused company for the conduct of its business.



5. As regards the petitioners in Crl.O.P.No.30585 of 2019, the learned counsel would submit that in any case, so far as A5, namely, the 2nd petitioner in Crl.O.P.No.30585 of 2019 is concerned, he may be permitted to raise all his points before the Trial Court. As regards A3, namely, the 1st petitioner in Crl.O.P.No.30585 of 2019, the learned counsel would submit that the allegations are vague; that the 1st petitioner being a lady has nothing to do with the affairs of the company.

6. The learned counsel for the respondent would fairly submit that so far as the petitioner in Crl.O.P.No.9940 of 2019 is concerned, in view of the incontrovertible document produced on her behalf, she may not be incharge and responsible for the conduct of the 1st accused company and consequently liable for the offences under Section 138 of the Negotiable Instruments Act.

7. As regards the petitioners in Crl.O.P.No.30585 of 2019, the learned counsel would submit that in the quash petition the petitioners



have stated that the 3rd accused is an authorised signatory and not the 5th accused. These are the disputed questions of fact, cannot be entertained in quash petition and hence he prayed for the dismissal of the quash petition.

8. This Court finds that so far as the petitioners in Crl.O.P.No.30585 of 2019 are concerned, the allegations would show that they are incharge of and responsible to the 1st accused company for the conduct of its business. The question as to whether the 3rd accused is the authorised signatory or the 5th accused is authorised signatory cannot be gone into in the instant quash petition. However, the petitioners are at liberty to raise all their contentions including that they were not incharge and responsible for the conduct of the 1st accused company, before the Trial Court.

9. As regards the petitioner in Crl.O.P.No.9940 of 2019 is concerned, the Judgement of the Hon'ble Supreme Court in ***Gunmala Sales Pvt. Ltd. Vs. Anu Mehta & others*** reported in ***(2015) 1 SCC 103***,



would apply and the relevant portion of the said Judgement is extracted

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“c) In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about role of the Director in the complaint. It may do so having come across some unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of the process of the court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if



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the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed;”

The above observations squarely apply to the facts of the instant case.

10. The petitioner in Crl.No.9940 of 2019 admittedly is a person who suffers from 90% disability. In view of her disability, she cannot be said to be incharge of and responsible to the 1st accused company for the conduct of its business. Hence, this Court is inclined to quash the



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complaint in so far as the petitioner in Crl.No.9940 of 2019 alone,
namely, A4 in the impugned complaint.

11. In the result, the petition in Crl.O.P.No.9940 of 2019 is allowed and the petition in Crl.O.P.No.30585 of 2019 is dismissed. However, the appearance of the petitioners in Crl.O.P.No.30585 of 2019 before the Trial Court is dispensed with unless the learned Judicial Magistrate I, Tirupur considers their presence necessary for the progress of the Trial. Consequently, the connected miscellaneous petitions are closed. No costs.

12. The learned Judicial Magistrate I, Tirupur is directed to conduct the Trial as expeditiously as possible and complete the same preferably within a period of 6 months from this day.

17.04.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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Crl.O.P.Nos.30585 & 9940 of 2019

To

The Judicial Magistrate I,
Tirupur.



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SUNDER MOHAN. J,

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