



Crl.O.P.No.9382 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.08.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.9382 of 2024

Deepa.

... Petitioner/Accused No.3

/versus/

K.Saravana Kumar.

... Respondent/Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the entire records in S.T.C.No.25 of 2023 from the file of the Special Judicial Magistrate Court (Fast Track Court), Omalur, Salem District and quash the same so far as the petitioner/3rd accused is concerned.

For Petitioner : Mr.D.Shivakumaran

For Respondent : Mr.T.Balaji

ORDER

Page No.1/6



CrI.O.P.No.9382 of 2024

WEB COPY

This Criminal Original petition is filed to quash the S.T.C.No.25 of 2023 on the file of the Special Judicial Magistrate Court (Fast Track Court), Omalur, Salem District.

2. The petitioner herein is one of the partner in an unregistered partnership firm by name, M/s.G.P Constructions. Along with Partnership firm and the other partner, she is facing criminal prosecution in S.T.C.No.25 of 2023 on the file of Judicial Magistrate, Fast Track Court, Omalur, Salem District. The petitioner submits that she being the wife of the 2nd accused, is a non-functional partner, she has no knowledge about the issuance of cheque nor she has involved in the day-to-day affairs of the partnership firm. When statutory notice was issued, she along with other partner has replied to the complainant stating that she has not involved in the day-to-day affairs of the business and she is not signatory to any document related to the business of M/s.G.P.Constructions (1st accused). Hence, no liability can be fasten upon her for the subject cheque alleged to have been given by A2 during business transaction. Despite specific denial of liability vicariously, the complaint been filed and same taken cognizance without proper application of

Page No.2/6



3. The Learned Counsel for the petitioner submitted that in the statutory notice as well as in the complaint and also in the proof affidavit filed in lieu of chief examination, the consent and connivance of the petitioner has not been stated.

4. Per contra, the Learned Counsel for the complainant submitted that there is specific averment in the complaint that the accused 1 to 3 had promised to honour the cheque at the time of presentation. Therefore, he submit that the contention of the petitioner's Counsel that no averment in the complaint regarding petitioner's knowledge, consent, connivance and role in the affairs of the Company is unsustainable.

5. The Learned Counsel for the respondent also relied upon the judgment of the Hon'ble Supreme Court in ***S.P.Mani and Mohan Dairy -vs- Snehalatha Elangovan*** reported in ***2020 SCC Online 1238***, wherein, it has held



CrI.O.P.No.9382 of 2024

that when there is material disclosed in the complaint and statutory notice regarding the knowledge of the Partner/Director regarding issuing of cheque, it is sufficient to fasten the vicarious liability upon such Directors/Partners under Section 141(2) of N.I Act.

6. This Court, after giving anxious consideration of the rival submissions and scrutiny of the statutory notice as well as the complaint find that the subject cheque was signed and given by A2 as an authorised signatory of A1's firm for discharge of debt of Rs.46,60,000/-. It was a post-dated cheque and in the complaint, it is specifically stated that the post-dated cheque was given to the complainant on 03.12.2022 by A2.

7. The subsequent averment that A3/the petitioner herein along with A2 promised to honour the cheque was not on the date of issuing the post-dated cheque which is the subject matter of the complaint but a subsequent event. Even if that to be accepted, the reading of Section 141(2) of N.I Act indicates that the vicarious liability upon the Directors or Partners can be fixed only if they were in



Crl.O.P.No.9382 of 2024

active participation of the affairs of the Company and also had knowledge about the issuance of the cheque.

8. In the case in hand, both in the statutory notice as well as in the complaint it is specifically stated that on 03.12.2022 the subject cheque was issued only by A2. While so, the observation of the Hon'ble Supreme Court in ***S.P Mani & Dairy case cited supra***, that the cheque was issued with consent of the non-signatory Partners will attract offence under Section 138 of N.I Act will not apply.

9. In such circumstances, this Criminal Original Petition is allowed against A3/the petitioner herein alone. The trial Court shall proceed against A1 and A2 and dispose of the matter preferably within a period of three months, from the date of receipt of copy of this order.

09.08.2024

Index :Yes/No.
Internet :Yes/No.
bsm

Dr.G.JAYACHANDRAN, J.

bsm

Copy to:-

Page No.5/6



Crl.O.P.No.9382 of 2024

1. The Special Judicial Magistrate Court (Fast Track Court), Omalur, Salem District.

Crl.O.P.No.9382 of 2024

09.08.2024

Page No.6/6