



Crl.O.P.No.10764 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.10764 of 2023
and
Crl.M.P.Nos.6806 & 6808 of 2023

Vijaya Arun

... Petitioner

Vs.

M/s.New Link Overseas Finance Limited,
by its director, Mr.U.P.Prakasham
Mamatha Complex, Second Floor, No.25
Whites Road, Royapetta, Chennai – 14
Duly rep. by its authorised signatory General Manager
Mr.S.Sivaramakrishnan

...Respondent

Prayer: Criminal Original Petition under Section 482 of the Criminal Procedure Code to call for the records in to S.T.C.No.10344 of 2022, pending on the file of the FTC-II, Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner : Mr.Nithyash Nataraj

For Respondent : Mr.C.P.Palanichamy



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ORDER

This quash petition has been filed by the petitioner / A3 to quash the proceedings in S.T.C.No.10344 of 2022, pending on the file of the FTC-II, Metropolitan Magistrate, Egmore, Chennai.

2. The respondent has filed the complaint under Section 138 of the Negotiable Instruments Act against the Company and its Directors. The petitioner who has been arrayed as A3 has approached this Court on the ground that she is a non-executive Director and that she is not even a signatory of the cheque and she has been roped in as an accused without making the necessary allegations in the complaint.

3. The learned counsel for the petitioner submitted that the copy of Form 32 is available in the typed set of papers which clearly shows that the petitioner is a non-executive Director and therefore, the respondent ought to have made allegations in the complaint as to how and in what manner, the petitioner is engaged in the day to day affairs and incharge and responsible



for running the affairs of the Company. In the absence of the same, it was contended that the petitioner cannot be made to undergo a criminal prosecution.

4. *Per contra*, the learned counsel for the respondent by relying upon the judgment of the Apex Court in ***S.P.Mani and Mohan Dairy Vs. Dr.Snehalatha Elangovan reported in 2022 Livelaw (SC) 772***, submitted that the ground that has been raised by the petitioner has to be agitated only before the Court below and not in the quash petition. The learned counsel for the respondent specifically relied upon paragraph 47 (d) of the judgment and it is extracted hereunder:

"(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."



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5. This Court has carefully considered the submissions made on either sides and perused the materials available on record.

6. In the instant case, the petitioner (A3) is admittedly not a signatory of the cheque. The allegations that have been made in the complaint as against the petitioner is extracted hereunder:

6. The second accused is the Managing Director of the first accused company and the 3rd accused Mrs. Vijaya Arun is one of the Director of first accused company have been in charge during the course of their business when the subject cheque has been issued. The above cheque has been issued by the accused and promised to the complainant that the same would be honoured on presentation. The complainant with great belief had presented the subject cheque on 10.10.2019 with their Banker Indian Bank, Ethiraj Salai Branch. To the shock and surprise of the complainant the said cheque has been returned Dishonoured for the reason "Account Closed".

9. It is submitted that the 2nd accused being the Managing Director and 3rd accused being one of the Director who are respectively in charge of the managing all such business activities of the 1st accused company and also running the day to day affairs naturally aware about their liability. The 4th accused is the authorised signatory who has signed and issued the subject cheque that got dishonoured. Hence all the accused are jointly liable and



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so they are punishable under Section 138 and 141 of the Negotiable Instruments Act, 1881. It is needless to say that according to Section 141 of Negotiable Instruments Act, 1881, if the person committing an offence under Section 138 is a company, then every Director of such company who is in charge of and responsible to that company for conducting of its business shall also be deemed to be guilty. Thus the accused have committed a serious criminal offence punishable under Sections 138 and 141 of the Negotiable Instruments Act and that they are liable to be prosecuted for the same. Hence this complaint.

7. The petitioner specifically claims that she is a non-executive Director and that she is not engaged in the day to day affairs of the Company. To substantiate the same, the Form 32 has been relied upon which shows that the petitioner is a non-executive Director. This document is of a sterling quality and is unimpeachable which can be relied upon. In view of the same, it is necessary for the respondent to have specifically stated in the complaint as to how and in what manner the petitioner is incharge and responsible for the day to day affairs of the Company. The averments that have been extracted supra makes it clear that no such allegation has been made and the provision under Section 141 of the Negotiable Instruments Act has been merely reproduced in the complaint.



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8. Even in the judgment that was relied upon by the learned counsel for the respondent, it has been made clear that where the accused furnishes sterling incontrovertible material, same can be acted upon by the Court and in such circumstances, the Court can see if a complaint can be quashed on the ground that the basic averments have not presented in the complaint as to how and in what manner the petitioner is incharge and responsible for the day to day affairs of the Company. Same is also made clear in the above judgement in paragraph No46.

9. In the light of the above discussion, continuation of the criminal proceedings as against the petitioner (A3) will result in abuse of process of law, which requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C. Accordingly, the criminal proceedings in S.T.C.No.10344 of 2022, pending on the file of the FTC-II, Metropolitan Magistrate, Egmore, Chennai, is quashed insofar as the petitioner is concerned.



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10. This Criminal Original Petition is allowed in the above terms.

There shall be a direction to the Court below to proceed further with the complaint as against the other accused persons and complete the proceedings within a period of four months from the date of receipt of a copy of this order. Consequently connected miscellaneous petitions are closed.

23.01.2024

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Index : Yes/No

Speaking order: Yes/No

Neutral citation: Yes/No

To

1.The FTC-II, Metropolitan Magistrate,
Egmore, Chennai.

2.The Public Prosecutor,
High court, Madras.



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N.ANAND VENKATESH,J

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