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Crl.O.P No.17661 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.17661 of 2023
and Crl.MP.No.11603 of 2023

Mrs.Ranbir Kour

... Petitioner/Accused 3

.Vs.

M/s.Arabia Metals Cans
Rep.by its Manager
K.Murugan
S/o.Kalimuthu
No.21 A, Thiruvotriyur High Road
New Washermenpet
Chennai 600081.

.. Respondent /Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in connection with STC.No.566 of 2022, pending on the file of the Hon'ble M.M.George Town FTC-IV at Chennai and quash the same.

For Petitioner : Mr.P.Govindarajan

For Respondent : Mr.P.Tamilavel

ORDER

This criminal original petition has been filed to quash the proceedings in STC.No.566 of 2022, pending on the file of the Metropolitan Magistrate, FTC-IV, George Town Chennai.



2.The respondent/complainant filed a private complaint against the Company and its Directors on the ground that they had purchased raw materials from the respondent and towards this transaction, owed outstanding amounts. Towards this liability, two cheques were issued. These cheques were deposited, it was dishonored with an endorsement "exceeds arrangements". Thereafter, the statutory notice was issued and pursuant to the same, the private complaint came to be filed against the Company and its Directors.

3.The main ground that was urged by the learned counsel for the petitioner is that A1 is the Company and A2 is the Managing Director, who was the signatory of the cheque. The petitioner has been arrayed as A3 on the ground that she is also a Director of the Company. However, there are absolutely no allegations in the complaint as to how and in what manner the petitioner was incharge and responsible for running the day to day affairs of the Company. On this ground, the learned counsel sought for quashing of the complaint insofar as the petitioner is concerned.

4.Per contra, the learned counsel for the respondent submitted that necessary allegations were made in the complaint to the effect that the petitioner was also taking care of the day to day affairs of the Company and the cheques were issued with the knowledge of the petitioner. The learned counsel further submitted that the accused persons were dragging on with the proceedings and they were not



appearing before the Court and NBW was issued against both A2 and A3. The petitioner alone has recalled the warrant and whereas, the NBW is still pending as against A2. The learned counsel submitted that there are absolutely no grounds to quash the proceedings at this stage and that the petitioner has to necessarily establish her defense only before the Court below.

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

6.In the instant case, A2 is Managing Director of the Company and he had signed the cheque on behalf of the Company. The averments that were made against the petitioner (A3) in the complaint are extracted hereunder:

***3.**The Complainant states that the 1st Accused is a Company represented by the 2nd Accused who is the Managing Director of the 1st Accused is doing Metal Can business and the 3rd Accused is the Director of the 1st Accused and she is looking after the day to day affairs of the company.*

***4.** The Complainant respectfully states that the 1st Accused is doing Metal Can Business and 2nd Accused is Managing Director and Signatory of the cheques.The complainant's company doing Metal Can Raw Materials Manufacturing and Trading Business. The 1st Accused Company used to purchase raw materials from the complainant. For the above said Business transactions and liability, there was an outstanding due of Rs.12,96,751.08/-. When the complainant requested for the said amount the 2nd and 3rd Accused have issued following cheques for the*



said liability.

7.The petitioner has been arrayed as an accused mainly on the ground that she is also a Director of the A1 Company. The averments made in the complaint as against the petitioner does not state as to how and in what manner the petitioner was incharge of the day to day affairs of the Company. The law on this issue is now too well settled and the latest judgment of the Apex Court in **Siby Thomas v. M/s. Somany Ceramics Ltd.,** reported in **2023 SCC online SC 1299,** can be relied upon.

8.The Apex Court has repeatedly held that there is no use in merely extracting the words contained in the provision under Section 141 of the Negotiable Instruments Act, 1881 and there must be a specific averment as to how and in what manner the Director is incharge and responsible for the day to day affairs of the Company. This allegation is completely missing in the instant case.

9.In the light of the above discussion, the continuation of the criminal proceedings as against the petitioner (A3) will result in abuse of process of Court which requires the interference of the Court.

10.In the result, the proceedings in STC.No.566 of 2022, pending on the file of the Hon'ble M.M.George Town FTC-IV at Chennai, is quashed only insofar as the petitioner (A3) is concerned. The Court below is directed to proceed further with the complaint in STC No.566 of 2022, as against A1 and A2 and the same shall be



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completed within a period of **three months** from the date of receipt of a copy of the order. The compliance report shall be filed before this Court.

11.This criminal original petition is accordingly allowed with the above directions. Consequently, connected miscellaneous petition is closed.

09.01.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
KP

To

Metropolitan Magistrate
FTC-IV, George Town, Chennai.



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N. ANAND VENKATESH., J

KP

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