



Crl.O.P.No.23452 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.23452 of 2022

and

Crl.M.P.Nos.14963 and 14964 of 2022

1.P.Suhasini
2.J.Kayalvizhi

... Petitioners

Vs.

M/s.Samunnati Financial Intermediation
and Services Pvt. Ltd.,
Rep.by its Consultant – Power Agent
M.Kannan

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to call for the records pertaining to the complaint in S.T.C.No.4046 of 2022 on the file of the learned V Fast Track Metropolitan Magistrate, Saidapet, Chennai and quash the same.



Crl.O.P.No.23452 of 2022

For Petitioners : Mr.G.Pugazhenth

For Respondent : Ms.Rukmani Venugopalan

ORDER

The petitioner has filed this Criminal Original petitions to quash the proceedings in S.T.C.No.4046 of 2022 on the file of the learned V Fast Track Metropolitan Magistrate, Saidapet, Chennai, in which the cognizance was taken for the offences under Section 138 of the Negotiable Instruments Act.

2. The prosecution's case is that the Trust, namely M/s. Vinayagar Perarasar Trust, approached the complainant seeking a Medium Term Loan facility for the purpose of lending requirements amounting to Rs. 66,00,000/- (Rupees Sixty-Six Lakhs only). This loan was sanctioned via a sanction letter dated 24.02.2021, which was duly accepted by the Trust. The Trust agreed to abide by the various terms and conditions stipulated in the Medium Term Loan Agreement and thereby availed a facility with a limit of Rs. 66,00,000/- (Rupees Sixty-Six Lakhs only). The second and third accused executed the loan agreement dated 25.02.2021 as those in charge of the day-to-day affairs of the first accused, i.e., the Trust, guaranteeing to



Crl.O.P.No.23452 of 2022

repay the trade credit availed by the Trust at the rate specified in the Medium Term Loan Agreement. It is further stated that, as of 22.02.2022, there was an outstanding amount of Rs. 49,96,990/- (Rupees Forty-Nine Lakhs Ninety-Six Thousand Nine Hundred and Ninety only) payable to the complainant by the Trust.

3. The learned counsel for the petitioner submitted that the petitioners are ranked as A4 and A5 in the proceedings initiated against them under Section 183 of the Negotiable Instruments Act by the respondent. Only A2 and A3, the managing trustees, entered into the term loan agreement. The petitioners, on behalf of the first accused, did not participate in any active role nor did they enter into any agreement. Therefore, the proceedings initiated against the petitioners are liable to be quashed.

4. To support his contention, the learned counsel for the petitioner relied on the *Hon'ble Supreme Court Judgement reported in CDJ 2022 SC 821, in the case of Sunita Palita & Others Vs. M/s.Panchami stone quarry*, which reads as follows;



Crl.O.P.No.23452 of 2022

WEB COPY

“46. As held by this Court in National Small Industries Corporation Ltd., Harmeet Singh Paintal, (2010)3 SCC 330 quoted with approval in the subsequent decision of this Court in Pooja Ravinder Devidasani V. State of Maharashtra and Another (Supra) the impleadment of all Directors of an Accused Company on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company, without anything more, does not fulfill the requirements of Section 141 of the NIA.

47. In any event there could be no justification for not dispensing with the personal appearance of the appellants, when the company had entered appearance through an authorized officer. As held by this Court in Pepsi Foods Ltd., V.Special Judicial Magistrate and Ors., (1998) 5SCC 749 summoning an accused person cannot be resorted to as a matter of course and the order must show application of mind.”

5. By way of reply, the learned counsel for the petitioner submitted that the proceeding initiated against A1 to A3 is sufficient since they are the Managing Trustees. The cheque was issued on behalf of A1 by A2 and A3, and the board resolution reveals that these two petitioners also signed in the loan agreement. Therefore, they are necessary parties to the proceedings, as submitted by the respondent.



Crl.O.P.No.23452 of 2022

6. The learned counsel for the respondent submitted that the proceedings made in both resolutions were signed by the petitioners. Based on the involvement of all these parties, the loan arrangement was agreed upon, and both of them signed in the loan agreement.

7. In the present case, the petitioners, who signed as parties in the loan agreement, cannot rely on the authority cited by the petitioner, as it is not applicable to the facts of the present case. Because the petitioners also signed the loan agreement. Thus, this Court declines to quash the proceedings in S.T.C.No.4046 of 2022 on the file of the learned V Fast Track Metropolitan Magistrate, Saidapet, Chennai.

8. Accordingly, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

14.03.2024

Speaking Order/ Non Speaking Order

Index: Yes/ No

Neutral Citation: Yes/No

rri



WEB COPY



Crl.O.P.No.23452 of 2022

T.V.THAMILSELVI, J.

ri

To.

The V Fast Track Metropolitan Magistrate,
Saidapet, Chennai.

Crl.O.P.No.23452 of 2022

and

Crl.M.P.Nos.14963 and 14964 of 2022

14.03.2024