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CrI.OP.No.27205 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.O.P.No.27205 of 2024

and

CRL.MP.Nos.15063 and 15064 of 2024

1.Sreelakshmi Muraleedharan
2.Harikrishnan Nayar Raveendranathan

... Petitioners

S
Vs.

M/s.Alphatex
Represented by its Authorised Person
C.Anandakumar
No.2, Govindasamy Layout
Iyer Hospital Road, Singanallur
Coimbatore 641 005

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in STC.No.21 of 2024 on the file of learned Judicial Magistrate / Fast Track Judicial Magistrate Court No.2 of Coimbatore and quash the complaint in so far as against the petitioners.

For Petitioners : Mr.P.Saravana Sowmiyan



CrI.OP.No.27205 of 2024

WEB COPY

For Respondent : Mr.A.Ashok Kumar

ORDER

This Criminal Original Petition is filed to quash the proceedings in STC.No.21 of 2024 on the file of the learned Judicial Magistrate / Fast Track Judicial Magistrate Court No.2 of Coimbatore, thereby taken cognizance for the offences under Section 138, 141 and 142 of Negotiable Instruments Act as against the petitioners

2. The respondent lodged a complaint for the offence punishable under Section 138 of Negotiable Instruments Act as against the petitioner alleging that the second respondent is doing Textile Trading Business. The first accused is having garment manufacturing company. The second respondent supplied 100% cotton knitted finished fabrics to the first accused as per the specifications of the accused on several occasions and the first accused failed to pay an amount of Rs.66,68,716/-. The second accused had issued cheques on behalf of the first accused towards the discharge of the legal liability and the same was returned for "insufficient funds" when presented for realization. After issuing legal notice, the respondent has lodged a complaint and the same has been



CrI.OP.No.27205 of 2024

taken cognizance by the learned Judicial Magistrate/Fast Track Judicial Magistrate Court-II, Coimbatore in C.C.No.21 of 2024 . To quash the said proceedings, the present petition has been filed.

3. The learned counsel for the petitioner submits that there are totally five accused involved in this case in which the petitioners are arrayed as A3 and A4. The petitioners are added as accused Nos.3 and 4 in the capacity of erstwhile partners of the first accused partnership firm namely M/s.Sumix Apparels LLP. They have nothing to do with the first accused partnership firm. Though they were inducted as partners, they were not involved in any day to day affairs of the partnership firm. The first accused placed orders and the second accused issued cheques on behalf of the first accused. In the complaint, the second respondent did not mention any specific overt act as against the petitioners to attract the offence under Section 141 of Negotiable Instruments Act.

4. In respect of his contentions, he has relied upon the judgment of Hon'ble Supreme Court of India reported in (2023) 8 Supreme Court Cases 473 rendered in the case of *Ashok Shewakramani and Others /Vs/ State of Andhra Pradesh* and another in which, the Hon'ble Supreme Court of India held that



WEB COPY



CrI.OP.No.27205 of 2024

“19. Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it comes to a penal provision. The vicarious liability is attracted when the ingredients of Sub-Section (1) of Section 141 are satisfied. The Section provides that every person who at the time the offence was committed was in charge of, and was responsible to the company of the conduct of business of the Company as well as the Company shall be deemed to be guilty of the offence under Section 138 of the NI Act. Only by saying that a person was in charge of the Company at the time when the offence was committed is not sufficient to attract sub section (1) of Section 141 of NI Act”.

5. Per contra, the learned counsel for the respondent submits that on receipt of the statutory notice, the fifth accused replied that as if the fifth respondent is not involved in the day to day affairs of the first accused firm. The firm's affairs are solely handled by her husband and in-laws, namely the petitioners herein. The fifth accused is not responsible for the affairs of the said firm. There is a strained relationship between the fifth accused and her husband, leading them to live separately since January 2023. Thereafter, in the absence of the fifth accused, her husband fraudulently created a partnership agreement dated 03.03.2020 by forging



Cr.OP.No.27205 of 2024

her signature. Thereby, she has been falsely implicated as a partner in the first accused firm without her consent. That apart, the FIR has been registered on the file of Shornur Police Station, Palakkad, Kerala in Cr.No.958 of 2015 and it is pending, in which all the others were partners of the first accused firm. Investigation is now pending.

6. He also vehemently contended that the petitioners herein produced the certificate as if the first petitioner was working as Senior House Surgeon at Government General Hospital, Thiruvananthapuram from 07.10.2022 to 06.10.2023 and the second petitioner certified himself as if he is working at Colony Health Centre-Dental Wing, ISRO Quarters, Stationkadavu from 27.02.2022 to 30.11.2023 as Consultant Endodontist and also working in the P.R.Dental Speciality Centre, Thiruvananthapuram from 25.07.2022 to 30.11.2025. Therefore, though the complaint does not say about the specific overt act against the petitioners, a perusal of document reveals that in order to escape from the clutches of law the petitioners fabricated certificates as if they are not involved in the day to day affairs of the first accused activities.

7. As rightly pointed out by the learned counsel for the respondent, the fifth accused lodged a complaint and the same has been registered in



CrI.OP.No.27205 of 2024

Cr.No.958 of 2023 as against the accused persons on the file of the Shornur Police Station, Palakkad. Therefore, the offence under Section 138 of Negotiable Instruments Act has been committed by the first accused with consent and connivance of other accused. It is covered by Section 141(2) of Negotiable Instruments Act.

8. It is clear from the above narration that the first accused had committed the offence under Section 138 of NI Act with consent and the connivance of the third parties of the first accused. Therefore, the judgement cited by the learned counsel for the petitioner is not applicable to the present case. Further, the petitioners did not send reply notice. Further, that apart a perusal of cheques issued by the accused are not clear as to who signed the same. Though the petitioners had taken specific stand that the cheques are signed only by the second accused, it is not clear from the cheque and the learned counsel for the petitioners also failed to substantiate the contention.

9. In view of the above discussion, this Court finds no ground to quash the entire proceedings in STC.No.21 of 2024 on the file of the learned Judicial Magistrate / Fast Track Judicial Magistrate Court-II, Coimbatore as against the petitioners. The petitioners are at liberty to



CrI.OP.No.27205 of 2024

WEB COPY

raise all the grounds before the trial Court. Considering the age of the petitioners, the personal appearance of the petitioners are dispensed with and they shall be represented by a counsel after filing appropriate application. However, the petitioners shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 351 of BNSS and at the time of passing judgment. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

10. In the result, the Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petitions are closed.

29.04.2025

Vv

To

1. The Judicial Magistrate /
Fast Track Judicial Magistrate Court No.2
Coimbatore
2. The Public Prosecutor,
Madras High Court,
Chennai.

7/9



WEB COPY



CrI.OP.No.27205 of 2024

G.K.ILANTHIRAIYAN, J.

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WEB COPY



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