

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD
DATED THIS THE 31ST DAY OF MARCH, 2011
BEFORE
THE HON'BLE MR. JUSTICE V. JAGANNATHAN
CRL.P.NO.8069/2009 C/w. CRL.P.NO.8070/2009

IN CRL.P.NO.8069/2009:

Between:

Mrs.Shaila Basavaraj Hooli,
Major, Occ.: Business,
R/o.: Plot No.603, Kshitij,
Shankar Nagar – 2, Pune-411009.
(Maharashtra State)

... Petitioner

(By Sri.Srinand A.Pachhapure, Advocate)

And:

Bharatesh Devendrappa Kittur,
Age 32 years, Occ.: Business,
R/o.: Basavanagar, Laxmi Extension Area,
Gokak, District Belgaum.

... Respondent

(By Sri.Laxman T.Mantagani, HCGP)

This criminal petition is filed u/S.482 Cr.P.C. seeking to quash the issuing of summons dated 09.03.2009 and entire proceedings in C.C.No.225/2009 with respect to this petitioner/accused No.6, on the file of the Principal Civil Judge (Jr.Dn.) & JMFC, Gokak.

IN CRL.P.NO.8070/2009:

Between:

Mrs.Shaila Basavaraj Hooli,
Major, Occ.: Business,
R/o.: Plot No.603, Kshitij,
Shankar Nagar – 2, Pune-411009.
(Maharashtra State)

... Petitioner

(By Sri.Srinand A.Pachhapure, Advocate)

And:

Sri.Sanjeev Ravajappa Bastawad,
Major, Occ.: Business,
R/o.: Hukkeri, Tq.: Hukkeri,
District Belgaum.

... Respondent

(By Sri.Laxman T.Mantagani, HCGP)

This criminal petition is filed u/S.482 Cr.P.C. seeking to quash the order of cognizance dated 16.02.2008 and entire proceedings in C.C.No.113/2008 with respect to this petitioner/accused No.6, on the file of the JMFC, Hukkeri.

These petitions are coming on for admission this day, the Court made the following:

COMMON ORDER

These two petitions are preferred by the same petitioner, who is accused of having committed an offence punishable under Section 138 of the N.I. Act along with other accused



persons named in the complaint filed by the respondent herein.

2. It is the case of the respondent-complainant that, in respect of the loan amount taken by the accused persons who are running business in the name of Sparkle Technology Pvt. Ltd., on being entrusted by accused No.4. The complainant came into the contact with the other accused and the accused had taken Rs.7,65,000/- (in respect of Crl.P.No.8069/2009) and the cheque was issued by the Managing Director on 14.08.2007. The complainant presented the said cheque for collection and it returned with endorsement "insufficient funds" and, therefore, the complaint was lodged alleging the offence under Section 138 of the N.I. Act.

3. The trial court took cognizance and issued summons to the accused persons numbering six.

4. The petitioner's counsel submits that this petitioner though is the Director of the aforementioned company, she has resigned from the company as Director on



06.08.2005 and her resignation was also accepted. Moreover, the cheque in question was issued by the Managing Director and it was issued on 14.08.2007, long after the petitioner having resigned from the post of Director. Therefore, the question of the petitioner having committed the alleged offence does not arise. Moreover, the person who can be proceeded against is the one who had issued the cheque and it is not in dispute that the cheque was issued by the Managing Director and not by the petitioner. Therefore, the proceedings against the petitioner be quashed.

5. The learned counsel for the petitioner also relied on the order passed by this court in a similar case in Crl.P.No.7886/2009, wherein this court had quashed the proceedings on the finding that the cheque was not issued by the petitioner therein.

6. The submission of the learned counsel for the respondent is that, the document indicating that the petitioner has resigned from the post of Director ought to have been produced before the trial court. In the absence of the said document being produced before the trial court, the



order of the trial court does not call for any interference. In this connection the learned counsel also referred to the order passed by this court in Crl.P.7208/2010, where it was observed that, while interpreting the provisions of the Companies Act, the court can, at any stage, lift the 'Corporate veil' and look into the subject. It is therefore contended that this petitioner is also involved in the loan transaction, and as such, the petitioner is also a necessary party to the proceedings.

7. Having thus heard both sides, it is clear from the material placed that this petitioner had not issued the cheque in question and secondly, the petitioner also contends that she had resigned from the post of Director on 06.08.2005 and in Form No.32 filed before the Registrar of Companies, it is also clearly stated that the petitioner had resigned from the post of Director. Taking these two aspects into consideration and more particularly, the fact of the cheque in question not having been issued by the petitioner, but by the Managing Director that too after the date of the resignation of the petitioner, all these factors do not justify the petitioner being



proceeded against by the trial court in respect of the offence punishable under Section 138 of the N.I. Act.

8. This court has also taken the view that the person who was the active Director and had not signed the cheque cannot be proceeded against and issuance of summons to the said person would be an abuse of the process of law. The order referred to by the respondent's counsel however is not applicable to the facts and circumstance of these cases.

9. For the above reasons, both petitions are allowed and the summons issued and the proceedings therein are all quashed. This shall not come in the way of trial court proceeding with the case insofar as the Managing Director, who had issued the cheque in question, is concerned.

Vnp*

Sd/-
JUDGE