

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2015

DELIVERED ON : 13.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P. No.28405 of 2014
and M.P.No.1 of 2014 & M.P.No.1 of 2015

1.Venkateswar Rao Nellutla
2.Fortlinks Implex Limited
rep by its Managing Director.
3.Suman Nellutla
4.Manthena Satyanarayana Raju
5.Laxmi Nellutla .. Petitioners

Vs

Sify Technologies Limited
Rep by its Executive Secretarial,
Mr.D.J.Poornachander
2nd Floor Tidel Park No.4
Rajiv Gandhi Salai, Taramani
Chennai 600 113. .. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C.
to call for the records in C.C.No.2956 of 2014, on the file of the
Court of III Fast Track Metropolitan Magistrate, Saidapet, Chennai
and to quash the same as illegal, null and void.

For Petitioner Mr.Ravikumar
For Respondent M/s PSA Legal Counsellors

ORDER

This petition has been filed to call for the records in
C.C.No.2956 of 2014, on the file of the Court of III Fast Track
Metropolitan Magistrate, Saidapet, Chennai and to quash the same as
illegal, null and void.

2. Heard the learned counsel for the petitioners and the learned
counsel for the respondent.

3. The respondent herein has lodged a complaint against the petitioners for an offence under Section 138 of the Negotiable Instruments Act in C.C.No.2956 of 2014 before the learned XVIII Metropolitan Magistrate, Saidapet, which was subsequently transferred to the file of the III Fast Track Metropolitan Magistrate Court, Saidapet, Chennai, and is under challenge in this quash proceedings.

4. It is the case of the complainant that they are internet service providers and had provided certain services to "Sprint Marketers" and for the amount due from "Sprint Marketers", the first petitioner/first accused had issued three cheques, total amounting to Rs.33,00,000/-, which when presented were returned for insufficient funds, following which the complainant issued a statutory notice under Section 138 of the Negotiable Instruments Act and thereafter, launched the present prosecution.

5. This Court carefully considered the rival submissions and scrutinised the complaint. On a reading of the complaint, there are sufficient materials for prosecuting petitioners 1 and 2, but there are no materials to prosecute petitioners 3 to 5. The only allegation against petitioners 3 to 5 is as follows:

"13. The complainant states that the first accused connived with other accused, had issued the cheques with dishonest intention, knowing fully well that the same would not be honored when presented for encashment by the complainant. Thereby, all the accused have attributed to the above mentioned offence and, hence, all of them are jointly and severally liable to be prosecuted and punished as envisaged under the provisions of Sections 138 & 141(1) of the Negotiable Instruments Act, 1881."

6. In Gunmala Sales Pvt. Ltd. vs. Navkar Promoters [(2015) 1 SCC 104] the Hon'ble Supreme Court has stated that there should be specific averments in the complaint about the involvement of the Directors in the affairs of the Company, which averments are miserably absent in the present complaint.

In the result, the petition is partly allowed. The proceedings as against petitioners 3 to 5 in C.C.No.2956 of 2014 on the file of the Court of III Fast Track Metropolitan Magistrate,

Saidapet, Chennai are quashed. As against petitioners 1 and 2, this petition is dismissed. Consequently, connected miscellaneous petitions are closed.

gms

s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1. III Fast Track Metropolitan Magistrate,
Saidapet, Chennai

2. -do- thro' The Chief Metropolitan Magistrate,
Egmore, Chennai 8.

+ 2 ccs to Mr.R.Ravikumar, Advocate SR 35095

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