

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.06.2015

DELIVERED ON : 17.06.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.OP No.24850 of 2012 and M.P.Nos.1 and 2 of 2012

M/s Galaxy Amaze Kingdom Limited
Galaxy House
Iswarya Garden
No.14, Main Street, Venugopal Nagar
Thirumullaivoyal
Chennai 600 062
Rep by Mr.M.Palaniswamy
Managing Director

..Petitioner/Accused

Vs

M/s Steward Capital Pvt. Ltd
Rep by its Chief Executive Officer
No.42/2 Lakshmi Talkies Road
Shenoy Nagar, Chennai 600 030.

... Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C.,
to call for the records in C.C.No.4870 of 2011 on the file of the
Fast Track Court, Egmore, Chennai and quash the same.

For Petitioner Mr.S.N.Amarnath
For Respondent Mr.Thomas T.Jacob

ORDER

The petitioner who is the accused in C.C.No.4870 of 2011 for
an alleged offence under Section 138 of the Negotiable Instruments
Act, seeks to quash the prosecution launched by the respondent
herein.

2. For the sake of convenience, the parties will be referred
to as the complainant and the accused.

3. It is the case of the complainant that, they were
appointed as Super Stockists by the accused for distribution of
certain products of the accused in some specified areas. It is seen
that the complainant was appointed as Super Stockist by virtue of an
agreement dated 11.11.2010 entered into with the accused. It is the
case of the complainant that the accused received a sum of Rs.11
lakhs as recoverable caution deposit from the complainant under
Clause 2 of the agreement dated 11.11.2010. On account of certain
differences that cropped up between the accused and the complainant,
the appointment of the complainant as Super Stockist stood
terminated. When the complainant called upon the accused to refund
the sum of Rs.11 lakhs that was paid as recoverable caution deposit,

the accused gave the impugned cheque dated 30.05.2011 for Rs.11 lakhs, which when presented by the complainant, was returned for insufficiency of funds. The complainant issued a statutory notice dated 05.07.2011 to the accused and on the failure of the accused to pay the amount, the complainant lodged the present complaint for an offence under Section 138 of the NI Act, challenging which the accused is before this Court.

4. Mr.S.N.Amarnath, learned counsel for the petitioner submitted that the prosecution itself is not maintainable in view of Clauses 29 and 30 of the agreement dated 11.11.2010, which read as follows:

"29. That either of the parties have the option to terminate the Agreement after giving 180 days notice to the other party. Meantime company reserves its rights to appoint another fresh SS for the same place from the date of receiving withdrawal letter or termination. If another SS is appointed by the Company for the same place, then within 30 days time Company will repay the SS eligible dues amount subject to stocks & materials accounts reconciliation and certification from company.

(a) Meantime SS should return all the materials of stocks and all advertisement materials received from company or according to the written instruction from the Company for the stock transfer to the new SS then only SS is eligible to get their actual receivable payment on their deposit.

(b) In case in any situation if Company not able to appoint a new SS then relieving SS will be settled actual dues eligible Payment in 180 days time.

(c) In any circumstances delay more than 180 days for the repayment, then only Company is liable to pay 12% per annum interest for the delayed period only.

(d) From the date of withdrawal, company reserves its rights to appoint new SS for the same place to replace the relieving SS.

30. In case of any dispute between both the parties in any manner, dispute should be resolved through the Arbitration Act only. The Courts of Chennai only will be having jurisdiction over the matter in this Agreement. It is applicable for both side of parties."

5. Mr.S.N.Amarnath, learned counsel for the petitioner submitted that the accused had got 180 days under Clause 29 of the Agreement, on account of which the prosecution is not maintainable. He further contended that, in view of the Arbitration Clause in Clause 30 of the Agreement, this prosecution is not maintainable. In support of this contention, Mr.Amarnath, learned counsel relied upon the following judgments.

(i) Agri Gold Exims Ltd. v. Sri Lakshmi Knits & Wovens and others [(2007) 6 MLJ 984 (SC)]

(ii) Reva Electric Car Company Private Limited v. Green Mobil [(2012) 2 SCC 93]

(iii) Shanku Concretes Pvt. Ltd. and others v. State of Gujarat and another [2000(3) Crimes 602]

6. On the contrary, the learned counsel for the complainant refuted the allegations and relied upon the judgments of the Hon'ble Supreme Court in:

(i) M/s Sri Krishna Agencies v. State of A.P. and another [CDJ 2008 SC 1918]; and

(ii) HMT Watches Ltd. v. M.A.Abida & another [CDJ 2015 SC 233]

7. This Court carefully considered the rival submissions and the authorities submitted by either side and finds that the argument advanced by Mr. Amarnath, learned counsel for the petitioner cannot be countenanced. The prosecution for an offence under Section 138 of NI Act cannot be either stifled by the provisions of Clause 28 in the Agreement nor by the Arbitration Clause in the said agreement. An offence under Section 138 of the NI Act is complete, when after the issuance of the statutory notice, the accused does not pay the amount covered by the cheque within the time stipulated by the statute. In this case, the sum of Rs.11 lakhs was given by the complainant as a recoverable caution deposit and when the agreement got determined, the complainant approached the accused for the return of the deposit, which is undoubtedly a legally enforceable debt. It is trite law that provisions of statute will override the provisions of private contract. Under such circumstances, there is no merit in the submissions advanced on behalf of the accused. Accordingly, this petition is dismissed. Consequently, connected miscellaneous petitions are closed.

8. Since the case is of the year 2011, the trial Court is directed to expeditiously conduct the trial and complete the same within a period of six months from the date of receipt of a copy of this order.

-sd/-

Assistant Registrar

/ True Copy /

Sub-Assistant Registrar

To

1. The Judge,
Fast Track Court, Egmore, Chennai.

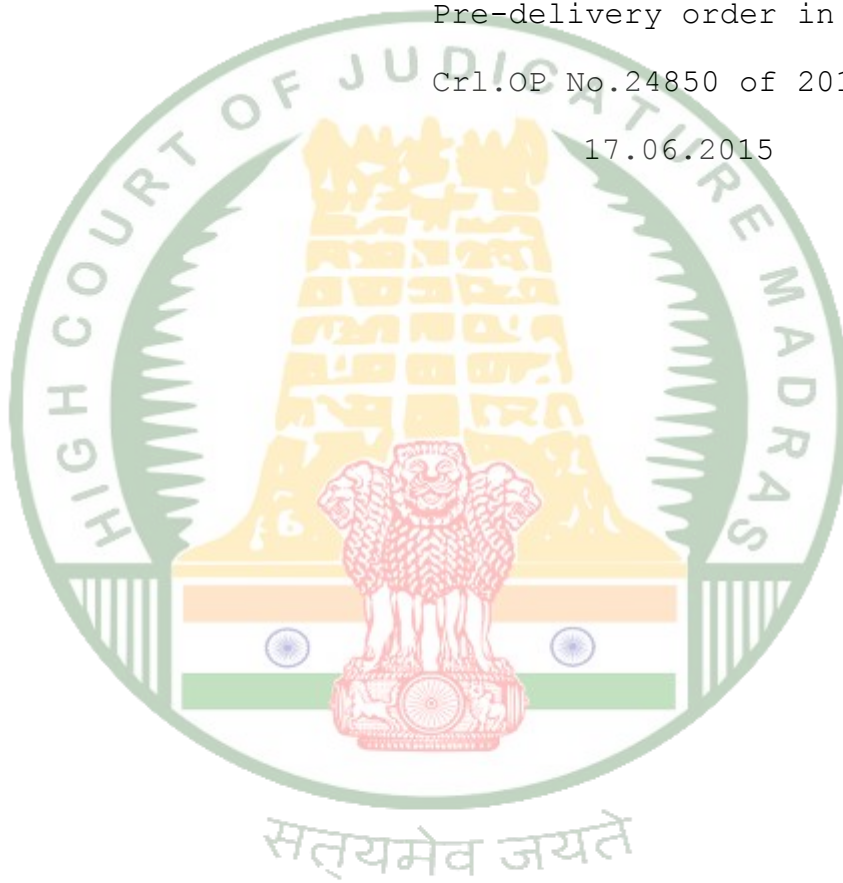
CO-TEJ

ths : 30.06.2015

Pre-delivery order in

Cr1.OP No.24850 of 2012

17.06.2015



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