

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2015

CORAM

The Hon'ble Mr. Justice R.S.Ramanathan

Crl.O.P.No. 29220 & 29301 of 2010
and
M.P.No1,1 and 2 of 2010

S. Jayachandra RajaPetitioner in both Petitions

vs.

R.JaganathanRespondent in both Petitions

Prayer in both Petitions :-

Criminal Original Petitions filed under Section 482 of the Criminal Procedure Code to call for records relating to the cases in C.C.Nos.190 and 189 of 2010, respectively, on the file of the Judicial Magistrate No.I, Udumalpet, and to quash the same.

For Petitioner : Mr.S.Gunalan

For Respondent : Mr.M.N.Balakrishnan

COMMON O R D E R

The petitioner herein is the third accused in C.C.Nos.189 and 190 of 2010 respectively, on the file of Judicial Magistrate No.I, Udumalpet.

2. The respondent/complainant filed the abovesaid cases against the petitioner and others for offence under Section 138 of Negotiable Instruments Act, 1881, and these Petitions are filed to quash the said cases insofar as the petitioner herein is concerned.

3. The learned counsel appearing for the petitioner submitted that, even according to the complaints, there was a Memorandum Of Understanding (M.O.U.) between the petitioner and the respondent, and as per the said M.O.U, if the cheque amount was not paid by the petitioner, the respondent has to take over the Mill under lease, and adjust the amount due to him by running the Mill. Therefore, even assuming that cheques were dishonoured, the respondent cannot prosecute the petitioner, and only remedy available to the petitioner is to take over the Unit and run the same as per the M.O.U.

4 Heard the learned counsel appearing for the respondent.

5. I am unable to accept the contentions of the learned counsel appearing for the petitioner. It is the specific case of the respondent that, towards the amount payable under the M.O.U, dated 11.01.2010, the petitioner, who is the Managing Director of the first accused/Company named " Silver Mine Silk Process Pvt. Ltd.," issued three cheques, for a total sum of Rs,17,00,000/-, and those cheques were returned with endorsements "Funds Insufficient", and after issuing statutory notices, complaints were filed. Admittedly, no reply notice was sent by the petitioner to the statutory notices. Though in the M.O.U, it is stated that in the event of failure on the part of the petitioner in making the payment, Unit can be taken on lease by the respondent, that cannot be taken advantage by the petitioner.

6. It is seen from M.O.U that, it was entered into between the petitioner and the respondent in their individual capacity, and the Unit is owned by Silver Mine Silk Process Pvt. Ltd., therefore, it cannot be contended that, as per M.O.U., the respondent can take over the management of Silver Mine Silk Process Pvt. Ltd., which is an independent legal entity and also not party to the M.O.U. Further, all these aspects cannot be gone into, at this stage, and it is for the parties to lead evidence during trial. Hence, I do not find any merit in these Criminal Original Petitions. Accordingly, the Criminal Original Petitions are dismissed, as being devoid of merits. Consequently, connected M.Ps. are closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

sd

To

The Judicial Magistrate No.I,
Udumalpet.

2 cc to Mr.S.Gunalan , Advocate Sr.No.28811 and 28812/15

Cr1.O.P.No. 29220 & 29301 of 2010

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pmk.13.7.2015