**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : **09.11.2016**

CORAM

**THE HONOURABLE MR.JUSTICE P.KALAIYARASAN**

**Crl.O.P No.9773 of 2010**
**and M.P.No.1 of 2010 and M.P.No.2 of 2010**

N.Karthikeyan .. Petitioner

Vs.

1. State Rep. by
   Inspector of Police
   City Crime Branch,
   Coimbatore.

2. The Manager
   HSBC Bank,
   Branch Office,
   Race Course Road,
   Coimbatore. .. Respondents

**Prayer:-** Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and quash the proceedings in Crime No.25 of 2010 on the file of the City Crime Branch, Coimbatore.

For Petitioner : Mr.P.Muthukrishnan

For Respondents : Mr.E.Raja, APP for R1

Mr.M.S.Murali
for M/s. R.R.Partners for R2

**ORDER**

This Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings in Crime No.25 of 2010 on the file of the City Crime Branch, Coimbatore.

2. It is averred in the petition that the petitioner used to supply yarn to various parties on credit basis and the second respondent Bank sanctioned Domestic Factoring Facility which makes the petitioner company supply cotton yarn to various customers on regular basis and the petitioner shall discount the bills raised by it with the Bank. In turn the petitioner's suppliers directly issued cheque to the second respondent Bank and that facility has been sanctioned to the petitioner to the tune of Rs.1.08 crores, as per the agreement, dated 30.03.2008.

3. Due to the failure in the State power supply, the suppliers could not meet the demand and in turn could not settle the amount to the Bank. Therefore, the delay occurred in settling Rs.65 lakhs and the cheques were dishonoured which leaded to the Bank for issuance of notice under Section 138 of Negotiable Instruments Act to the buyers and also against the petitioner. The Bank also filed Original Suit before the Debts Recovery Tribunal, Chennai in O.A.No.184 of 2009. The authorised officer of the Bank preferred a complaint alleging that the petitioner company cheated the Bank with forged document and discounted the bills for non-existing companies.

4. The dispute is purely a civil dispute and the Bank initiated action under Section 138 of Negotiable Instruments Act and before DRT. The allegation that seven buyers are non-existing companies is totally false. Therefore, the FIR is to be quashed.

5. The first respondent in its counter contends that the petitioner / accused and his brothers by making false representation to the second respondent Bank that they had made supplies cotton yarn to various parties on credit basis and approached for financial facilities. Believing the representation, the Bank sanctioned finance facilities to the tune of Rs.1.08 crores. The petitioner's company initially availed finance facilities and created confidence in the minds of the authorities of the Bank and managed to see that the amounts were repaid and after gaining confidence of the Bank, the petitioner's company availed facility for the second time and swindled the money. Only after the default, the Bank made enquiries and came to know that there was no such purchases made in the name of 7 companies given by the petitioner as purchasers. The petitioner / accused and his company had submitted forged and fabricated documents in the name of the said 7 non-existing companies and swindled the amount of the HSBC Bank by availing factoring facilities. Therefore, this Criminal Original Petition is to be dismissed.

6. The learned counsel appearing for the petitioner submits that having initiated Proceedings under Section 138 of Negotiable Instruments Act and the Civil Suit before DRT, the present criminal case registered against the petitioner is to be quashed. It is further contended that the offence is also not made out. In support of his contention, the learned counsel appearing for the petitioner cited **G.Sagar Suri v. State of U.P**, reported in **(2000) 2 SCC 636**. This Court perused the above Judgment of the Hon'ble Supreme Court and the same is not applicable to the facts of this case.

7. The learned Additional Public Prosecutor and the learned counsel appearing for the second respondent per contra contends that the petitioner availed the credit facilities by submitting forged and fabricated documents in the name of non-existing companies. It is further contended that proceedings under Section 138 of Negotiable Instruments Act have been initiated with respect to a smaller portion of the amount, for which cheques were issued and dishonoured. It is also further contended that Civil Suit was filed to recover the amount and it does not affect the criminal proceedings.

8. When there is allegation that the petitioner availed the

credit facility by producing fabricated documents in the name of the non-existing companies it is the matter to be probed by investigation.

9. As far as proceedings under Section 138 of Negotiable Instruments Act, it is categorically contended by the respondents that the same were initiated only for a smaller portion of the amount. The same has not been disputed with by the petitioner. Initiation of proceedings under Section 138 of Negotiable Instruments Act for a portion of the amount due to Bank does not disentitle the Bank authority, to prefer complaint before the police for fabrication of documents and cheating. Therefore, the contention of the petitioner in this regard is not sustainable.

10. Yet another contention of the learned counsel appearing for the petitioner is that when Civil Suit has been filed, criminal action is not sustainable. Civil Suit has been filed to recover the amount due to the Bank; that does not absolve the petitioner from criminal action for the offences he committed. Therefore, it is for the Investigating Officer to thoroughly investigate into the allegations and file the final report.

11. In this case, this Court does not see any reason to

invoke the inherent jurisdiction of this Court under Section 482 of

**P.KALAIYARASAN, J**

tsvn

the Code of Criminal Procedure as there is absolutely no abuse of process of law and accordingly, this Criminal Original Petition is liable to be dismissed.

In fine, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

**09.11.2016**

Index : Yes / No

tsvn

To

1. The Inspector of Police
   City Crime Branch,
   Coimbatore.

2. The Public Prosecutor,
   High Court of Madras, Chennai.

http://www.judis.nic.in