

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.12.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRL.O.P.No.17356 of 2009

M/s.K.P.R.Mill Ltd.,
No.270 J, Periyar Colony,
Anupparpalayam, Tirupur-641 652.
Represented by Marketing Manager,
Thiru C.Ganesh Karthick.

... Petitioner

- Vs -

1.M/s.Intex Europe,
No.25-A1, Asher Nagar,
60 feet Road,
Gandhi Nagar Post,
Tirupur.
Represented by its Partner
Paramasivam.

2.Paramasivam, Partner,
M/s.Intex Europe,
No.25-A1, Asher Nagar,
60 feet Road,
Gandhi Nagar Post,
Tirupur.

3.Saroja,
Partner,
M/s.Intex Europe,
No.25-A1, Asher Nagar,
60 feet Road,
Gandhi Nagar Post,
Tirupur.

... Respondents

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C. to set aside the docket order dated 12.05.2009 and made in S.T.C.No.1482 of 2009, pending on the file of the Judicial Magistrate No.-I, Tirupur.

For Petitioner : Mr.S.Silambanan,
Senior Counsel

For Respondents : No Appearance

O R D E R

This petition is filed under Section 482 Cr.P.C., to set aside the docket order dated 12.05.2009 and made in the case in S.T.C.No.1482 of 2009 pending on the file of the learned Judicial Magistrate No.I, Tirupur.

2. The petitioner herein is the complainant in the case in S.T.C.No.1482 of 2009. It appears from the records that the petitioner had presented a private complaint against the respondents 1 to 3 herein under Sections 138 and 142 of the Negotiable Instruments Act read with Section 200 of the Code of Criminal Procedure to punish them in accordance with law.

3. The sworn statement of the petitioner / complainant was recorded by the learned Judicial Magistrate No.I, Tirupur on 12.05.2009 through the representative of the petitioner. After recording the sworn statement of the petitioner, the learned Judicial Magistrate No.I, Tirupur erroneously had passed a docket order dated 12.05.2009 stating that prima facie case is made out as against R1, R2 / A1, A2 alone and not as against R3 / A3.

4. Being aggrieved by the above said order, the petitioner/complainant stands before this Court to quash the docket order dated 12.05.2009.

5. On perusal of the complaint filed by the petitioner under Sections 138 and 142 of Negotiable Instruments Act, it is revealed that the 1st respondent is the Partnership Firm and R2 and R3 are the Partners of the said Firm. According to the petitioner, both the respondents viz., R2 and R3 have been participating actively in the day to day affairs of the 1st Respondent Firm.

6. It is also revealed that the respondents are engaged in Garment manufacturing. According to the complainant, he had settled yarns to the accused under Invoice No.5112 dated 19.12.2007 for Rs.4,83,360/- and as such the said respondents had to pay a sum of Rs.4,83,360/- to the petitioner/complainant. Towards repayment of the above said amount the respondents 2 and 3 had issued a cheque in favour of the petitioner dated 14.11.2008 bearing No.111418 for the value of Rs.4,83,360/-. The above said cheque was drawn on Dhanalakshmi Bank Ltd., Tirupur. When the cheque was presented for encashment on 09.02.2009, it was bounced back on 10.02.2009 with an endorsement saying that 'funds insufficient'. After issuing legal notice, the petitioner had filed the above said complaint on 01.04.2009. The petitioner's sworn statement was recorded on 12.05.2009.

7. In this connection, the learned Judicial Magistrate No.I, Tirupur had passed a docket order saying that 'complainant present. Sworn statement recorded complaint under Section 138 is made out as against A1 and A2 above and not against A3, who is a lady against whom there is no sufficient material. In the Rubber Stamp affixed beneath the complaint it is stated that documents perused prima facie case made out under Section 138 of Negotiable Instruments Act against the accused. Case taken on file posted to 03.01.2009.

8. According to Mr.S.Silambanan, learned counsel for the petitioner, the respondents 2 and 3 are the Partners of the 1st respondent Firm and as such they had jointly signed in the cheque bearing No.111418 dated 14.11.2008 for the value of Rs.4,83,360/-. He has also argued that the learned Judicial Magistrate-I, Tirupur had committed serious error in passing the order saying that the complaint U/s. 138 of Negotiable Instruments Act not made out as against A3 who is a lady against whom there is no sufficient material. Mr.Silambanan has also added that the learned Judicial Magistrate-I had pre-decided the issue with reference to 3rd respondent and as such he had proceeded to pass an erroneous order without application of mind. He has also maintained that though the 3rd respondent had signed in the disputed cheque as she being one of the Partners of the 1st respondent Firm, She is also liable and responsible to see that the cheque amount is paid to the petitioner. Without hearing and perusing the material and oral evidence, the learned Judicial Magistrate-I has proceeded to pass a docket order which is not sustainable in law and therefore, liable to be quashed.

9. As per the order of this Court a paper publication was effected for the hearing on 31.03.2016. On that day, the case was not listed. When the case was listed on subsequent hearing, i.e., on 08.12.2016, the learned counsel for the petitioner was directed to produce the copy of the paper publication. Accordingly, on the same day the copy of paper publication was produced before the Registry.

10. When the matter is taken up for hearing today, there is no representation for the respondents. On the other hand Mr.S.Silambanan, learned counsel for the petitioner is present and heard.

11. This Court has considered the nature of the case and perused the grounds of the petition.

12. Having regard to the relevant facts and circumstances, this Court is of considered view that the impugned order dated

12.05.2009 is deserved to be quashed and accordingly, the impugned order dated 12.05.2009 and made in the complaint in S.T.C.No.1482 of 2009 is quashed.

13. The learned Judicial Magistrate No-I, Tirupur is directed to take cognizance of the offences under Sections 138 and 142 of Negotiable Instruments Act, as against the 3rd respondent also and after issuing summons to the respondents 1 to 3, the learned Judicial Magistrate No-I is directed to dispose of the complaint on merits after following all the formalities within the shortest period of three months from the date of receipt of a copy of this Order.

With the above direction, this Criminal Original Petition is allowed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssn

To

1.The Judicial Magistrate No.-I,
Tirupur.

2.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.Kaavya Silambanan Associates, Advocate,
S.R.No.73762

CS IV
CA(03/08/2017)

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