IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2021

CORAM

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.No. 22783 of 2016
and Crl.M.P.Nos. 8944 of 2017 & 10631 of 2016

1. M/s. Vee Tech Solutions
   Represented by its Partner Mr.A. Sathyamoorthy
   No. 190-B, Pettukula Towers, Ground Floor,
   P.H.Road, Kilpauk, Chennai - 600 010.

2. A. Sathyamoorthy
3. Manoj ...Petitioners/Accused

Versus

M/s. Ideal Infotech
Represented by its Proprietor
Mr.G.Sudhakar,
No.1A, Basement, VGP Victory House,
No.17, Anna Salai, Chennai-600 002. ...Respondent/Complainant

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, 1973, to call for the records and set aside the order dated 16.09.2016 passed in M.P.No.1531 of 2016 in C.C.No.2957 of 2012, pending on the file of the learned FTC-II Metropolitan Magistrate Court, Egmore, Allikulam.

For Petitioner : Mr.K.Surendar
For Respondent : Mr.P.Gunaraj

O R D E R

This petition has been filed to set aside the order in M.P.No.1531 of 2016 in C.C.No.2957 of 2012, dated 16.09.2016 passed by the learned Metropolitan Magistrate, [Fast Track Court - II], Egmore, Allikulam.

2. The case of the petitioners is that the first accused viz., M/s.Vee Tech Solutions, had approached the complainant viz., M/s. Ideal Infotech for the supply and service of 35 Nos. of UPS Batteries to their office at No. 190-B, Pettukula Towers, Ground Floor, P.H.Road, Kilpauk, Chennai-600010 and the respondent/complainant had accepted and supplied the UPS Batteries and agreed for maintenance of those batteries on a monthly rent of Rs.12,500/-. The 1st accused/firm was

maintained by all the accused in the capacity of its Partners who are all responsible for the affairs of the company, as they are actively participating in the day-to-day affairs. The 2nd accused herein is an active Partner, who has been authorized to issue cheques and deal with other monetary transactions of the firm and is responsible for all the day- to-day transactions and affairs of the 1st accused firm. Thereafter, the 1st accused failed to pay the rent and maintenance charges from 01.08.2010 to 02.12.2011, amounting to Rs.2,12,500/- for the above said 35 batteries. In order to discharge the amount, the 1st accused had issued a cheque bearing No.087845, dated 26.12.2011 for a sum of Rs.2,12,500/- drawn on Axis Bank Limited towards the supply and maintenance charges of UPS Batteries. On 26.12.2011, when the cheque was presented for an encashment/realization by the complainant through his bankers viz., M/s. State Bank of India, Nelson Manikam Road Branch, Chennai, the same was returned on 27.12.2011 with an endorsement of “insufficient funds”. Thereafter, the respondent/complainant issued a statutory notice to all the accused on 25.01.2012. The 1st accused had refused to receive the said notice and the same was returned with an endorsement "Intimation Delivered" on 28.01.2012. However, the 2nd accused had received the notice on 28.01.2012 and the notice sent to the 3rd accused and the third accused had been returned with an endorsement 'Addressee Left" on 28.01.2012. All the three accused failed to make payment within fifteen days of the receipt thereof. The respondent/complainant had given a complaint to pursue the remedy for the re-possessing of the said UPS batteries and after agreeing to settle the entire amount, the accused herein, even after the receipt of legal notice dated 25.01.2012, had not settled the entire amount due under the dishonoured cheque, which shows the mala-fide intention of the accused not to repay the money to the respondent/complainant. The 2nd accused being the Managing Partner, who had issued the cheque, is responsible and in charge of the 1st accused firm. Therefore, the accused had committed the offence under Section 138 of the Negotiable Instruments Act.

3. The learned counsel appearing for the petitioners/accused submitted that the impugned order passed by the Court below is unsustainable and violates the right to have a fair trial guaranteed under Article 21 of the Constitution of India. The Court below ought to have noted that the petition U/s.311 of CrPC., has been filed by the respondent/complainant at the fag end of the trial, and after completing the oral and written arguments and the same is nothing but an attempt to fill up the lacuna in the prosecution case. He further submitted that the Court below has passed the impugned order U/s. 138 of the Negotiable Instruments Act, and the complainant has a right to bring in additional evidence depending upon the rebuttal of the

accused. Therefore, the Court below should have noted that the complainant has deliberately refrained from filing the additional documents during the trial and the present attempt to place such additional documentary evidence by filing petition under Section 311 of CrPC., is nothing but an attempt to harass the petitioners. Hence, the impugned order is illegal and deserves to be set aside.

4. The learned counsel for the respondent/complaint submitted that the respondent has prayed to recall the PW1-Kirubakaran, who is the Managing Director of M/s.Ideal Infotech Company, for the purpose of marking 17 invoices and a complaint was given to Police Authorities by the respondent/complainant for the re-possession of batteries from the accused. However, as per the version of the respondent/complainant, he had inadvertently omitted to mark those documents during Chief Examination done earlier. The respondent/complainant's case is solely based upon 17 invoices that have been sought for marking documents and that the respondent has not attempted to create new case, but he wants to strengthen his case by supplying documentary evidence. Hence, the impugned order passed by the Court below U/s. 311 of CrPC., is in accordance with law. Therefore, he prayed to dismiss the above Criminal Original Petition.

5. The grounds raised by the learned counsel for the petitioner are all factual in nature and it requires appreciation of evidence and this Court cannot decide the same in exercise of its jurisdiction under Section 482 of Criminal Procedure Code. It is left open to the petitioners to raise all the grounds before the Court below and the same shall be considered on its own merits and in accordance with law. This Court is not inclined to interfere at this stage with the proceedings pending before the Court below.

6. Accordingly, the Criminal Original Petition is disposed of and the Court below is directed to complete the proceedings in C.C.2957 of 2012, pending on the file of the learned Metropolitan Magistrate [Fast Track Court-II], Egmore, Allikulam, within a period of six months from the date of receipt of a copy of this order. Consequently, connected Criminal Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

msm

To

1. The Metropolitan Magistrate,
[Fast Track Court-II], Egmore, Allikulam.

2. The Public Prosecutor, High Court , Madras.

+1 CC to M/s.P.Gunaraj, Advocate, Sr.No. 31307.

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and
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KSM(CO)
LS(24/09/2021)