

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. Nos.22873 to 22878/2016 & Crl.M.P. Nos.10687 to
10698/2016

Sitaram Goel
Director, Aanchal Cement
formerly known as Kalika Cements Ltd.
No.23-A, Netaji Subhash Road
Suit - 5, VII Floor
Kolkata 700 001 Petitioner in all the Crl.O.Ps./Accused

vs.

Gimpex Ltd.
represented by its Authorised Signatory
S. Uma Shankar
Company Secretary
282, Lingi Chetty Street
Chennai - 600 001 Respondent in all the Crl.O.Ps./
Crl.OPs/Complainant

Criminal Original Petitions filed under Section 482, Cr.P.C. seeking to call for the records in C.C. Nos.100 of 2013, 3329 of 2012, 99 of 2013, 101 of 2013, 3328 of 2012 and 3327 of 2012 respectively, pending on the file of the Fast Track Court No.IV at George Town, Chennai and quash the same as against the petitioner.

For petitioner Mr. G.M. Ramasubramaniam
in all Crl.O.Ps. for M/s. Kumar & Baskar

For respondent Mr. A. Abdul Hameed
in all Crl.O.Ps. for M/s. AAV partners

COMMON ORDER

These Criminal Original Petitions are filed seeking to call for the records in C.C.Nos.100 of 2013, 3329 of 2012, 99 of 2013, 101 of 2013, 3328 of 2012 and 3327 of 2012 respectively, pending on the file of the Fast Track Court No.IV at George Town, Chennai and quash the same as against the petitioner.

2 For the sake of convenience, the parties are referred to by their name.

3 Gimpex Ltd. (complainant) launched 6 prosecutions in C.C.Nos.100 of 2013, 3329 of 2012, 99 of 2013, 101 of 2013, 3328 of 2012 and 3327 of 2012, which are now pending on the file of the Fast Track Court No.IV (Magisterial level), George Town, Chennai, against four accused, viz., (1) Kalika Cement Ltd., (2) Manoj Goel, (3) Mukesh Goel and (4) Sitaram Goel, challenging which, Sitaram Goel (A4) has filed the present petitions for quashing the prosecutions against him.

4 It is the case of Gimpex Ltd. that they entered into three high seas sale agreements on three dates with Kalika Cement Ltd., in which, the accused 2 to 4 are Directors, to the tune of Rs.29,54,86,859/-. It is further alleged by Gimpex Ltd. that Gimpex Ltd. had paid a sum of Rs.6,96,74,666/- to Kalika Cement Ltd. towards customs duty and wharfage charges for enabling Kalika Cement Ltd. to clear the goods. Even according to Gimpex Ltd., a total sum of Rs.36,51,61,525/- was due from Kalika Cement Ltd., out of which, a sum of Rs.23,43,86,516/- was paid and for the balance outstanding of Rs.13,07,75,009/-, Kalika Cement Ltd. had issued eighteen cheques for a value of Rs.9 crores, which, when presented by Gimpex Ltd., were returned unpaid on the ground "payment stopped by drawer". Hence, Gimpex Ltd. issued statutory notices under Section 138 of the Negotiable Instruments Act on 05.10.2012, 26.09.2012, 26.09.2012, 26.09.2012, 26.09.2012 and 22.09.2012 respectively and has thereafter, launched the six prosecutions, as aforestated.

5 Mr. G.M. Ramasubramaniam, learned counsel for Sitaram Goel contended that Sitaram Goel had resigned from Kalika Cement Ltd. on 12.02.2012 and therefore, he cannot be made liable under Section 141 of the Negotiable Instruments Act. In support of this contention, a copy of Form 32 that was filed with the Registrar of Companies, Kolkata on 06.10.2012, has been enclosed in the typed set of papers. Therefore, relying upon the various judgments of the Supreme Court, he contended that Sitaram Goel cannot be prosecuted under Section 138 with the aid of Section 141 of the Negotiable Instruments Act.

6 He further contended that the complaints are bereft of even the minimum averments explaining as to how Sitaram Goel was in charge of and responsible for the affairs of Kalika Cement Ltd. at the time of issuance of the cheques in question. To fortify his submission on this proposition, he placed reliance on several judgments, including the judgment of the Supreme Court in Gunmala Sales Private Ltd. [(2015) 1 SCC 103 and Pooja Ravinder Devidasani vs. State of Maharashtra and another [(2014)

16 SCC 1].

7 Controverting the allegations made by Mr. Ramasubramaniam, Mr. Abdul Hameed, learned counsel for Gimpex Ltd., submitted that the cheques in question were given during August and September 2012, during which period, Sitaram Goel had acted as Director of Kalika Cement Ltd. by signing several documents and deeds in the capacity of Director. He further submitted that after the cheques were dishonoured, Gimpex Ltd. issued statutory notices, for which, Kalika Cement Ltd. issued reply notices, in which, they had not stated that Sitaram Goel has resigned from the Directorship and only thereafter, on 06.10.2012, Sitaram Goel appears to have filed Form 32 to make it appear, as if he had resigned retrospectively with effect from 12.02.2012.

8 As regards the second contention, Mr. Abdul Hameed, learned counsel for Gimpex Ltd. submitted that there are sufficient averments in the complaints to show that Sitaram Goel had participated in the negotiations and was part of the business of Kalika Cement Ltd. and he also read those averments to the Court.

9 This Court gave its anxious consideration to the rival submissions and perused the records carefully.

10 As regards the contention of Mr. Ramasubramaniam as to the resignation of Sitaram Goel, it is seen that after the dishonour of the cheques on various dates, Gimpex Ltd. has issued notices under Section 138 of the Negotiable Instruments Act to Kalika Cement Ltd. and to all the Directors, including Sitaram Goel, calling upon them to make the payment within the period stipulated under the Negotiable Instruments Act. In response to the statutory notices, Kalika Cement Ltd. have issued reply notices, wherein, they have not taken a specific stand that Sitaram Goel had resigned from the Directorship as early as 12.02.2012. Even according to Kalika Cement Ltd., Form 32 was filed with the Registrar of Companies, Kolkata, only on 06.10.2012, which is after the reply dated 04.10.2012 and 05.10.2012. Therefore, this Court is not able to buy the argument that Sitaram Goel was not a part of Kalika Cement Ltd. when the cheques in question were issued and dishonoured.

11 As regards the second contention of Mr. Ramasubramaniam that the complaints lack minimum averments required to fasten criminal liability with the aid of Section 141 of the Negotiable Instruments Act, this Court perused the complaints and found the following averments:

"08. The complainant submits that, after negotiations with the 2nd to 4th accused they entered into three High Seas Sales Agreements with the 1st accused the details whereof is given hereunder:

18. The complainant submits that, the aforesaid cheques was issued by the Accused 2 to 4 on behalf of the 1st accused after discussions among themselves. The said cheques was/were signed by the 2nd accused. The day to day affairs of the 1st accused and the business of the 1st accused is jointly carried and conducted by the accused 2 to 4. Hence, all the accused are liable to be prosecuted and punished for the dishonour of the cheques."

12 Apart from this, Mr. Abdul Hameed, learned counsel for Gimpex Ltd., brought to the notice of this Court a clinching material, viz., copies of the impugned cheques that were issued by Kalika Cement Ltd., wherein, at the right bottom, i.e., in the place where signature is to be affixed, it has been printed as follows:

"KALIKA CEMENT LIMITED"

Director

S. Goel - DIR (M. Goel & Manoj Goel-Signatory)"

Thus, it is crystal clear that the name of Sitaram Goel is printed in the cheque leaves as being one of the persons authorised to sign the cheques.

13 Mr. Ramasubramaniam contended that the cheques in question were not signed by Sitaram Goel.

14 In the considered opinion of this Court, the fact that Sitaram Goel did not sign the cheques in question and that the other signatories had signed the cheques in question will not, in any way, improve his case. Sitaram Goel also is one of the authorised signatories for Kalika Cement Ltd., which is obvious from a bare perusal of the cheques in question. If this is viewed in the backdrop of the averments in the complaints, it cannot be stated that there are no prima facie materials against Sitaram Goel for the prosecutions to proceed against him.

15 Though Mr. Ramasubramaniam placed heavy reliance on the statement of law in Gunmala Sales Private Ltd. and Pooja Ravinder Devidasani, the following paragraph from Gunmala Sales Private Ltd. will answer the issue at hand:

"34.2 If a petition is filed under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a

particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director."

16 At the relevant point of time, when the cheques were issued, there were sufficient materials to show that Sitaram Goel was also an authorised signatory to sign the cheques in the capacity as a Director of Kalika Cement Ltd. Therefore, this Court is not able to persuade itself to agree with the submission of Mr. Ramasubramaniam.

In the result, this Criminal Original Petition is dismissed as being devoid of merits. It is made clear that whatever observations made in this order, are only for the limited purpose of deciding these quash applications and the Trial Court shall proceed with the trial uninfluenced by any of the observations made in this order. It is also made clear that it is always left open to the accused to raise all his defences before the Trial Court. Further, it is directed that Sitaram Goel shall appear before the Trial Court and furnish a bond under Section 88, Cr.PC., as directed by the Supreme Court in Indian Bank Association and Others vs. Union of India and others, [(2014) 5 SCC 590]. Connected CrI.M.Ps. are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Fast Track Judge No.IV
George Town
Chennai

+6cc to Mr.AAV Partners, Advocate, S.R.Nos66536 to 66541
+12cc to Mr.R. Baskar, Advocate, S.R.Nos.66630 to 66035

rv(CO)
md(09/12/2016)

CrI.O.P. Nos.22873 to 22878 of 2016