

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

CORAM

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

Crl.O.P.No.24156 of 2016

Crl.M.P.Nos.11499 and 11500 of 2016

1.M/s.Sporada Technologies India (P) Ltd.,
Rep by its Managing Director,
G.Vengutupathi.

2.G.Vengutupathi

3.Niveditha ... Petitioners

vs

M/s.Wire Line Solution India Pvt. Ltd.,
Rep. by its Authorised Person K.Rajasekar,
#339, Devaraj Arcade,
Bharathiyar Road,
New Siddhapudur,
Coimbatore.

...Respondent

Criminal Original Petition filed under Section 482,
Cr.P.C. Seeking to call for the records pertaining to the case
in C.C.No.244 of 2015 on the file of the learned Judicial
Magistrate No.3, Coimbatore and quash the same.

For Petitioners : Mr.N.Manoharan

For Respondent : Mr.K.S.Karthick Raja

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O R D E R

This Criminal Original Petition has been filed seeking to
quash the proceedings in C.C.No.244 of 2015 on the file of the
learned Judicial Magistrate No.III, Coimbatore. For the sake
of convenience, parties are referred to their names.

2. M/s.Wire Line Solution India Pvt. Ltd. is into the
business of providing wireless data services for commercial
and business entities. M/s.Sporada Technologies India (P)
Ltd. (A1) availed the services of M/s.Wire Line Solution India
Pvt. Ltd., for which a sum of Rs.42,135/- is due and payable.
In discharge of their liability, M/s.Sporada Technologies

India (P) Ltd. had issued two cheques for Rs.14,045/- each, which were presented by M/s.Wire Line Solution India Pvt. Ltd. and returned unpaid. Notice under Section 138 of the Negotiable Instruments Act, 1881 was issued and on the failure of the opposite party to pay the amount, M/s.Wire Line Solution India Pvt. Ltd. had instituted prosecution in C.C.No.244 of 2015 before the Judicial Magistrate No.III, Coimbatore under Section 138 of the Negotiable Instruments Act against M/s.Sporada Technologies India Private Ltd., Mr.Vengutupathi Gurusamy and Mrs.Jayaraj Nivedith. Challenging the same, all of them are before this Court.

3. Heard Mr.N.Manoharan, learned counsel appearing for the petitioners and Mr.K.S.Karthick Raja, learned counsel appearing for the respondent.

4. At the outset, Mr.N.Manoharan, learned counsel appearing for the petitioners submitted that the impugned cheques were not signed by Jayaraj Niveditha and the same were signed by Vengutupathi Gurusamy and therefore, the prosecution against Jayaraj Niveditha is an abuse of process of law.

5. Per contra, Mr.K.S.Karthick Raja, learned counsel appearing for the respondent refuted the allegations and submitted that Jayaraj Niveditha is one of the director of M/s.Sporada Technologies India Private Ltd. and she was also a part and parcel of the company.

6. This Court gave its anxious consideration to the rival submissions.

7. This Court perused the impugned cheques and found that signatures were indecipherable and when questioned, Mr.N.Manoharan, learned counsel appearing for the petitioners has filed an affidavit sworn to by Vengutupathi Gurusamy (A2) wherein in para 2, it is stated as follows:

"2. I submit that we have filed the above quash petition to quash the complaint in C.C.No.244 of 2015 pending on the file of the learned Judicial Magistrate No.3, Coimbatore. The 3rd petitioner is neither a drawer nor concerned with the subject matter cheques filed in C.C.No.244 of 2015. The impugned cheques have been signed by me for the reasons stated in para Nos.5 to 7 of the affidavit filed in support of the quash petition. Therefore, without prejudice to my defence and contentions raised in the quash petition, I admit my signatures found in the impugned cheques dated 01.12.2014 and 05.12.2014. However, the 3rd petitioner is no way concerned with the issuance of the cheques in dispute."

8. Admittedly, M/s.Sporado Technologies India Private Ltd. is a Company incorporated under the Companies Act, 1956 and is a juristic person. The cheques have been issued in the account of the Company. Under Section 141 of the Negotiable Instruments Act, persons who are incharge of and responsible to the affairs of the Company can be prosecuted for the offence under Section 138 of the Negotiable Instruments Act. Mr.Vengutupathi Gurusamy is stated to be the Managing Director of the Company and as admitted by him unequivocally, he has signed the impugned cheques. As regards, Mrs.Jayaraj Niveditha, there are no averments in the complaint that she is in-charge of and responsible to the affairs of the first accused Company.

9.Mr.K.S.Karthick Raja, learned counsel appearing for the respondent placed reliance upon the following lines in para 3 of the complaint:

"3.....In order to discharge the legally enforceable due, Accused No.3 issued part payment through cheque bearing No.624515 dated 01.12.2014 drawn at M/s. Yes Bank Ltd, Manchester Krishna Landmark, Avinashi Road, Coimbatore-641 018...."

In the opinion of this Court, this averment runs counter to the admitted fact that it was Vengutupathi Gurusamy who had issued the impugned cheques. Apart from this stray averment, the complaint lacks the minimum averment that is required to fasten criminal liability vicariously with the aid of Section 141 of the Negotiable Instruments Act.

10. In the result, the prosecution as against Mrs.Jayaraj Niveditha in C.C.No.244 of 2015 is not sustainable.

11. In fine, this Criminal Original Petition is partly allowed and the prosecution as against Mrs.Jayaraj Niveditha in C.C.No.244 of 2015 on the file of the Judicial Magistrate No.III, Coimbatore is hereby quashed. Mr.Vengutupathi Gurusamy cannot plead that he is unaware of the proceedings in C.C.No.244 of 2015 before the Judicial Magistrate No.III, Coimbatore inasmuch as he has challenged the proceedings before this Court and therefore, he is directed to surrender before the Judicial Magistrate No.III, Coimbatore within a period of two weeks from the date of receipt of a copy of this order and on such surrender, he shall be enlarged on bail under Section 436 Cr.P.C. on the same day on he furnishing a bond for Rs.10,000/- (Rupees Ten Thousand Only) with two sureties for the said sum to the satisfaction of the learned Magistrate.

It is made clear that except the defence that he is not a signatory to the cheques, rest of the defences are available to Mr.Vengutupathi Gurusamy before the trial Court. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.III,
Coimbatore.
- 2.The Public Prosecutor,
High Court, Madras
3. do the through the chief judicial magistrate,
coimbatore.

+1cc to Mr.N.MANOKARAN, Advocate, S.R.No.68914
+1cc to Mr.K.S.KARTHICK RAJA, Advocate, S.R.No.69033

सत्यमेव जयते

(CO)RJ
CP(02/01/2017)

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