

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.S. RAMESH

Crl.O.P.Nos.5494 to 5500 of 2017 and
Crl.M.P.Nos.5244 to 5250, 4094, 4096, 4098,
4100, 4102, 4104 and 4106 of 2017

Crl.O.P.No.5494 of 2017

1. M/s.Kalika Cements Limited
Now known as Aanchal Cement Ltd,
Rep. by its Authorised Signatory,
Mr.Vijay Srivastav,
23-A, N.S.Road, Suite No.5,
7th floor, Kolkata 700 001.

2. Manoj Goel

3. Mukesh Goel

... Petitioners

M/s.Gimpex Limited
Rep. by its Authorised Signatory
Mr.S. Uma Shankar
Company Secretary
No.282, Lighi Chetty Street,
Chennai 600 001.

-Vs-

... Respondent

PRAYER in Crl.O.P.No.5494 of 2017: Criminal Original Petition filed under
Section 482 of Cr.P.C, praying to call for the records in C.C.No.3326 of 2012
pending on the file of the Fast Track Court No.IV, George Town, Chennai, and
quash the same.

For Petitioners : Mr.A.R.L.Sundaresan
for M/s.Rugan & Arya

For Respondent : Mr.A.A.Abdul Hameed
for M/s.AAV. Partners

COMMON ORDER

Though the Miscellaneous Petitions are listed for disposal to day, by consent of the learned counsel appearing for the petitioners, Criminal Original Petitions themselves are being disposed of.

2. These petitions are filed to call for the records of the respective C.C.Nos. on the file of the Fast Track Court No.IV, George Town, Chennai, and quash the same.

3. The petitioners herein are arrayed as A1 to A3 in the impugned proceedings before the trial Court. The petitioners have raised various grounds in the affidavit touching upon the facts of the case and have indicated that the offence under Section 138 of the Negotiable Instruments Act has not been made out as against these petitioners. In my view, all these factual aspects need to be established only at the time of trial and it would not be proper to raise them in these petitions filed under Section 482 Cr.P.C. That apart, one of the Directors of the company who was also arrayed as an accused, had earlier filed a petition in Crl.O.P.Nos.22873 to 22878 of 2016 seeking to quash the

proceedings as against him and this Court, by order dated 15.11.2016, had dismissed his petition by observing as follows:-

“11. As regards the second contention of Mr.Ramasubramaniam that the complaints lack minimum averments requires 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:

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 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.

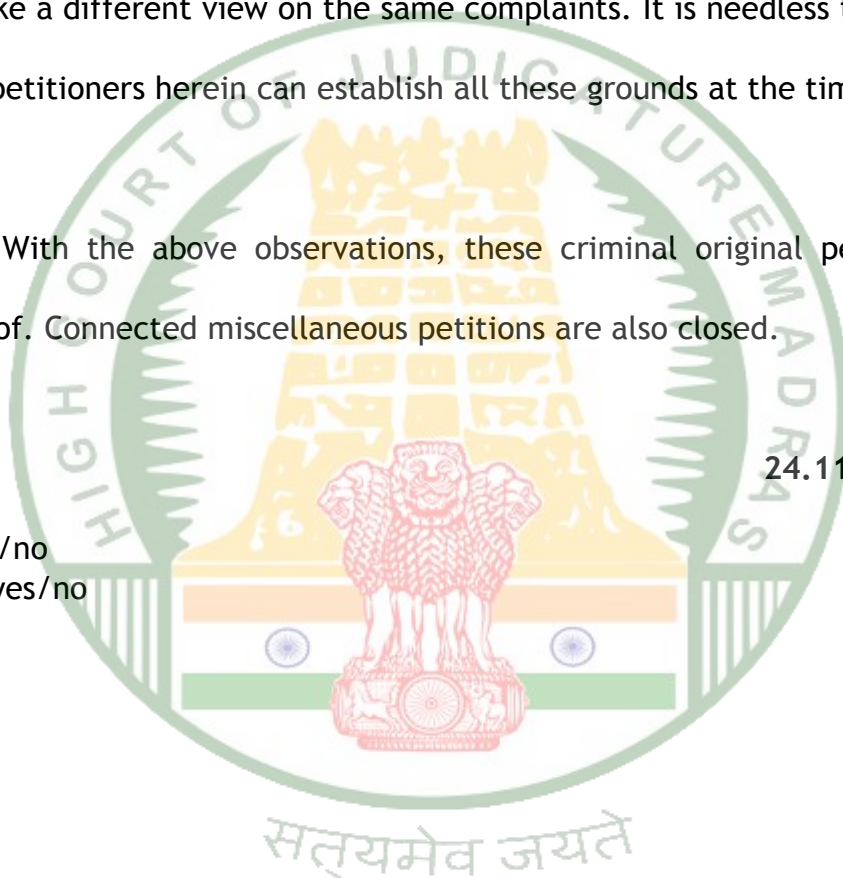
In the result, these criminal original petitions are dismissed as being devoid of merits. It is made clear that whatever observations made in this order, are only for the limited purposes of deciding these quash applications and the trial Court shall proceed with the trial uninfluenced by any of the 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.”

4. From the above observations, it is seen that this Court had already looked into the averments made in the complaint and was of the view that an offence under Section 138 of Negotiable Instruments Act has been made out in the said complaint. While that being so, I am unable to comprehend as to why I should take a different view on the same complaints. It is needless to point out that the petitioners herein can establish all these grounds at the time of trial.

5. With the above observations, these criminal original petitions are disposed of. Connected miscellaneous petitions are also closed.

24.11.2017

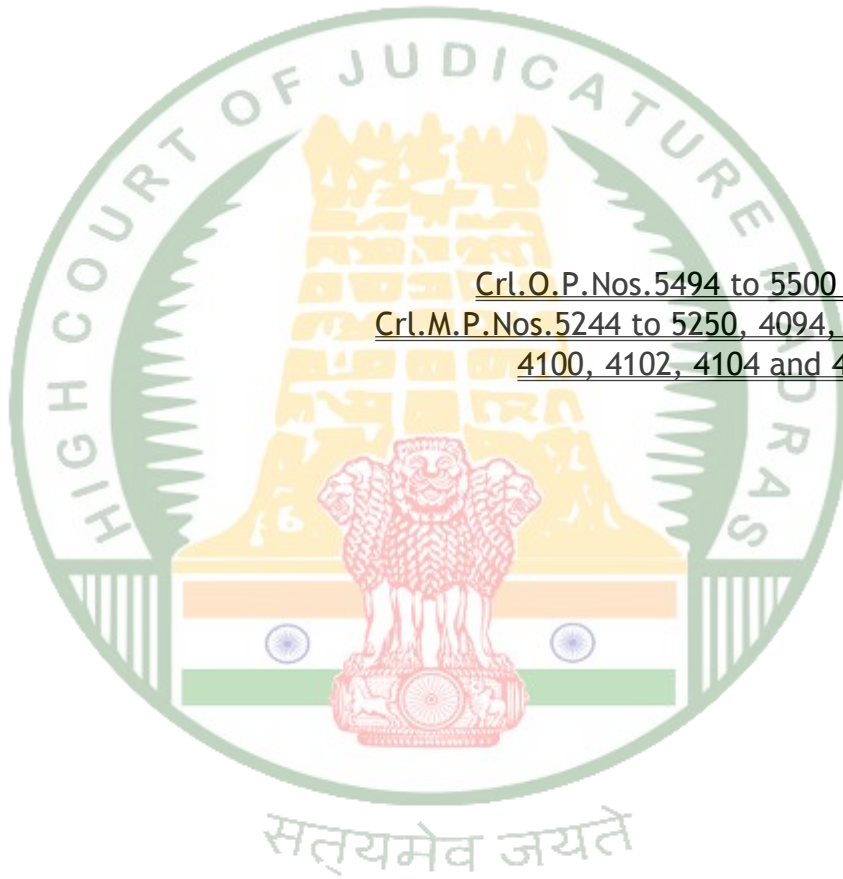
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M.S. RAMESH.J.,

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