

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.06.2017
CORAM
THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.27966 of 2011
and
M.P.No.1 of 2011

1. V.K.Harihara Sharma
2. Hemamritha Hariharan

.. Petitioners

Vs

Madras Cements Limited
rep. by S.Ramachandran
Fourth Floor, 98-A
Dr.Radhakrishnan Salai
Mylapore, Chennai - 600 004.

.. Respondent

PRAYER: Petition under Section 482 of the Code of Criminal Procedure to call for the records comprised in the proceedings in C.C.No.5342 of 2010 on the file of the VII Metropolitan Magistrate Court, George Town, Chennai and quash the same as against the petitioners.

For Petitioners : Mr.T.T.Ravichandran
For Respondent : Mr.V.Venkadasalam

ORDER

This Criminal Original Petition has been filed by the petitioners to call for the records comprised in the proceedings in C.C.No.5342 of 2010 on the file of the learned VII Metropolitan Magistrate Court, George Town, Chennai and quash the same as against the petitioners.

2. The facts in a nutshell are as under: The petitioners herein are accused 2 and 4 in C.C.No.5342 of 2010 on the file of the learned VII Metropolitan Magistrate Court, George Town, Chennai. The case of the petitioners is that one Ashwin Khumar Hariharan, son of the first petitioner and the brother of the second petitioner, floated a company by name Merilion Hi-Tec Vision Pvt. Ltd., and the petitioners except lending their names have no connection with the day-to-day administration of the said company.

3. It is further stated that one M.R.Builders, an acquaintance of Ashwin Khumar, sought his help for purchasing cement bags from the respondent company and the said Ashwin Khuman issued two cheques in favour of the respondent company towards security for supplying cements to M.R.Builders. It is stated that the respondent company had deposited the said two

cheques on 02.04.2010 and the same was returned by the bankers of the first accused as "funds insufficient". It is the case of the petitioners that as per the agreement between the first accused and the respondent company, the cheques are to be deposited only on effecting supply to M.R.Builders and inasmuch as on the date of deposit of cheques the cement bags were not delivered, there is no legal liability on the part of the first accused to honour the cheques.

4. It is averred that the officials of M.R.Builders have informed Ashwin Khuman that since the respondent had not supplied cement bags, there is no necessity to honour the cheques given as security. Thereafter, legal notices were exchanged between the parties and ultimately, the complaint was lodged and process was issued by the learned VII Metropolitan Magistrate, George Town, Chennai.

5. Seeking quashment of the said complaint, the present criminal original petition is filed.

6. The learned counsel appearing on behalf of the petitioners submitted that in the case on hand there is no evidence available that the materials were supplied to M.R.Builders and no documentary evidence has been filed before the trial Court and, therefore, there is no legally enforceable debt to invoke the provisions of Section 138 of the Negotiable Instruments Act.

7. The next contention of the learned counsel appearing for the petitioners is that the petitioners are not engaged in the day-to-day management of the company and there is no overt-act attributed as against the petitioners. He added that the first petitioner is 85 years old and the second petitioner is not a signatory to the cheques and, therefore, the complaint has been instituted only to prosecute the petitioners.

8. Per contra, the learned counsel appearing on behalf of the respondent submitted that the contentions now raised by the petitioners can only be substantiated based on evidence at the time of trial and no interference is warranted at this stage.

9. I heard Mr.T.T.Ravichandran, learned counsel for the petitioners and Mr.V.Venkadasalam, learned counsel for the respondent and perused the documents available on record.

10. Section 138 of the Negotiable Instruments Act casts criminal liability punishable with imprisonment of sentence or fine and with both on a person who issues a cheque towards discharge of a debt or liability as a whole or in part and the cheque is dishonored by the bank on presentation. Thus, under the provisions of Section 138 of the Act, any person who issues

a cheque for the discharge of liability and the said cheque is dishonoured, becomes criminally liable in the event of payment of dishonoured cheque not made after notice of demand is given to him to make the payment within 15 days of the receipt of the said notice. If the person committing an offence under Section 138 is a company then vicarious liability is fastened on certain other persons as well.

11. In the case on hand, it is the specific case of the respondent complainant that cement was delivered to the accused under invoices bearing Nos.004875, 004876 and 004885, dated 16.03.2010, 16.03.2010 and 17.03.2010 respectively and the accused were due and liable to pay a sum of Rs.1,29,000/- to the complainant, in respect of which the accused issued two cheques dated 19.03.2010 and 24.03.2010. The said liability is seriously disputed by the petitioners herein.

12. In the case on hand, the liability is disputed by the accused persons. That apart, it is also their plea that they are not involved in the day-to-day administration of the accused company. This controversy is to be adjudicated during trial by adducing evidence. That apart, the Hon'ble Supreme Court as well as this Court while considering the scope of the interference under Section 482 of Cr.P.C. has curled out certain principles and held that disputed question of fact has to be decided at the trial of the case when the parties adduce the evidence.

13. In such view of the matter, this Court finds no merit in this petition and, accordingly, the same is dismissed. No costs. However, in the facts and circumstances of the case, this Court is inclined to dispense with the personal appearance of the petitioners in C.C.No.5342 of 2010 on the file of the learned VII Metropolitan Magistrate Court, George Town, Chennai, except on occasions where the personal appearance of the petitioners is felt to be necessary by the Court below. The Court below is directed to dispose of the case within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

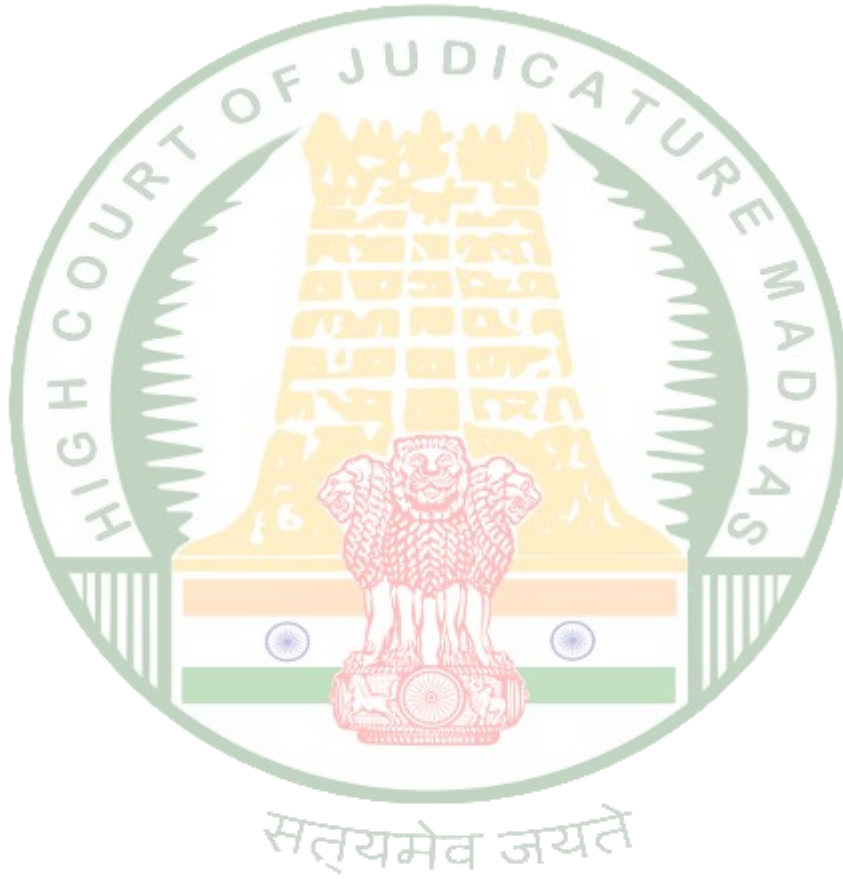
vs

To

The VII Metropolitan Magistrate
George Town, Chennai.

CRL.O.P.No.27966 of 2011
and
M.P.No.1 of 2011

rrs 05/12/2018



WEB COPY