

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.06.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl.O.P.Nos.17925 to 17931 of 2010
and
M.P.Nos.1,1,1,1,1,1 & 1 of 2010

Crl.O.P.No.17925 of 2010

Viveck Guptaa

.. Petitioner in Crl.O.P.Nos.17925 to
17928 of 2010

Manish Kedia

..Petitioner in Crl.O.P.No.17929 to 17931/2010

Vs

M/s.Sandip Industries

Rep. by its authorized Representative cum

Power of Attorney Agent

Mr.J.Rajan Babu

.. Respondents in all Crl.O.Ps

PRAYER: Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.130 of 2008, 50/2009, 52/2009, 53/2009, 131/2008, 49/09 & 51/2008 respectively on the file of the II Additional District Munsiff Court, Pondicherry and quash all the further proceedings.

(In all the Crl.OPs)

For Petitioner : Mr.C.Sundaresan

For Respondent : No Appearance

COMMON ORDER

These criminal original petitions were preferred by the petitioner/accused against the proceedings pending in C.C.No.130 of 2008 on the file of learned II Additional District Munsiff, Pondicherry and quash the same.

2.A separate Crl.O.P.No.17926 of 2010 is preferred by the petitioner/accused against the C.C.No.50 of 2009 pending on the file of the learned II Additional District Munsiff, Pondicherry, for the three impugned cheques bearing Nos.829974 dated 26.12.2005, 829975 dated 29.12.2005 and 829976 dated 2.1.2006 all cheques drawn on Punjab and Sind Bank of Panchasheel Tower, Secunderabad (A.P.) for a sum of Rs.1 Lakh each.

3.A separate Crl.O.P.No.17927 of 2010 is preferred by the petitioner/accused against the C.C.No.52 of 2009 pending on the file of the II Additional District Munsiff, Pondicherry, for the three impugned cheques bearing Nos.82997 dated 15.12.2005 , 829972 dated 19.12.2005 and 829973 dated 22.12.2005 all cheques drawn on Punjab and Sind Bank of Panchasheel Tower, Secunderabad (A.P.) for a sum of Rs.1 Lakh each.

4.A separate Crl.O.P.No.17928 of 2010 is preferred by the petitioner/accused against the C.C.No.53 of 2009 pending on the file of the II Additional District Munsiff, Pondicherry, for the four impugned cheques bearing Nos.829977 dated 5.1.2006 , 829978 dated 9.1.2006 and 829979 dated 12.1.2006 and 829980 dated 19.1.2006 all cheques drawn on Punjab and Sind Bank of Panchasheel Tower, Secunderabad (A.P.)for a sum of Rs.1 Lakh each.

5.A separate Crl.O.P.No.17929 of 2010 is preferred by the petitioner/accused against the C.C.No.131 of 2008, pending on the file of the II Additional District Munsiff, Pondicherry, for the impugned cheque bearing No.829095 dated 28.10.2005 , drawn on Punjab and Sind Bank of Panchasheel Tower, Secunderabad (A.P.)for a sum of Rs.1.50 Lakhs

6.A separate Crl.O.P.No.17930 of 2010 is preferred by the petitioner/accused against the C.C.No.49 of 2009 pending on the file of the Additional District Munsiff, Pondicherry, for the impugned two cheques bearing Nos.829099 dated 28.11.2005 , 829100 dated 5.12.2005 and 829976 dated 2.1.2006 all cheques drawn on Punjab and Sind Bank of Panchasheel Tower, Secunderabad (A.P.)for a sum of Rs.1.50 Lakhs each.

7.A separate Crl.O.P.No.17931 of 2010 is preferred by the petitioner/accused against the C.C.No.50 of 2009 pending on the file of the Additional District Munsiff, Pondicherry, for the impugned three cheques bearing Nos.829096 dated 7.11.2005,

829097 dated 14.11.2005 and 829098 dated 21.11.2005 all cheques drawn on Punjab and Sind Bank of Panchasheel Tower, Secunderabad (A.P.) for a sum of Rs.1.50 Lakhs each.

8. Brief case of the petitioner/accused:

The facts of the case is that the respondent/complainant is the distributor of Super Pack, Nagpur and deals in distribution of master batch material which is used in manufacture of woven sacks or plastic bags used for packing commodities like rice, sugar, fertilizer, chemical etc. M/s Sandip Industries its principle place of business at Pondicherry and branch at Valkampet Hyderabad. The petitioner/accused and his brother Manish Kedia were in charge of Hyderabad branch and their main duty was to receive materials from Super Pack, Nagpur, store it at Valkampet Godown and supply the materials from Super Pack, Nagapur, store it at Valkampet Godown and supply the materials to the customers in Hyderabad collect cheques and DDs from customers and credit the same to Sandip Industries. During the tenure of their service in Hyderabad the petitioner and his brother have collected huge amount from various customers and failed to deposit the same and misappropriate the same. The respondent/complainant demanded for the amount, the petitioner/accused had issued a post dated cheques on 21.10.2005 bearing No.829970 dated 19.11.2005 drawn on Punjab and Sind Bank of Panchasheel Tower, Secunderabad (A.P.) for a sum of Rs.1 Lakh towards the settlement of the misappropriated amount. The respondent/complainant deposited the cheque in his bank viz, ICICI Bank Ltd, Charminar Branch, Hyderabad (A.P.) for collection on 19.11.2005, the cheque was dishonoured and returned on 21.11.2005 for the reason funds insufficient. The respondent/complainant issued a statutory legal notice to the petitioner/accused which was received on 36.11.2005 and the petitioner/accused had sent a reply notice denying the liability. Hence the respondent/complainant preferred this complaint.

9. I heard Mr.C.Sundaresan, learned counsel for the petitioner and perused the entire materials available on record. No representation on behalf of the respondent.

10. The admitted case of the respondent is that the petitioner was looking after the Hyderabad branch office and its transactions. The petitioner/accused bank is situated in Hyderabad as well as the bank of the respondent. Except for the respondent, the petitioner and the witnesses cited in the complaint are all from Hyderabad.

11.All the cases in respect of similar in nature of charges, I have discussed only one cheque and decided all the cases.

12.The respondent/complainant had caused the legal notice from the Pondicherry and had filed the above case at a court in Pondicherry on the premise that the legal notice had been caused from Pondicherry and have alleged that the head office of the respondent is situated there. It is admitted case of the respondent that the entire transaction had taken place in Hyderabad and no cause of action had arose in Pondicherry except the respondent sending the Legal Notice and as such filing of the above case by the respondent in a court at Pondicherry is without any jurisdiction.

13.As per the section 138 of the Negotiable Instruments Act, what would constitute an offence is stated in the main provision and the proviso appended such as (a)(b) and(c) imposes further condition which requires to be fulfilled before cognizance of the offence to be taken by a competent court, from conjoint reading of these provisions it is crystal clear that the bankers of the petitioner and respondent are situated in Hyderabad, the entire transaction had taken place in Hyderabad and the receipt of statutory notice which would give rise to the cause of action is also at Hyderabad and it is imperative the respondent ought to have filed the complaint before a competent court in Hyderabad and not for in Pondicherry.

14.The issuance of notice by the respondent/complainant from Pondicherry by itself would not give rise to the cause of action and hence the respondent ought not to have filed the above complaint in Pondicherry causing great hardship to the petitioners. The respondent/complainant had preferred a criminal case against the petitioner and his brother for the same transaction with the Hyderabad Central Crime Station which was registered as Cr.No.780 of 2005 and after investigation a charge sheet has been filed against the petitioner and his brother in C.C.No.60 of 2009 which is pending on the file of learned XII Additional Chief Metropolitan Magistrate at Hyderabad. The petitioner/accused had also preferred a complaint against the respondent/complainant in Cr.No.464 of 2005 for offence of abduction, kidnap and forcibly obtaining cheques and signatures which is pending in Hyderabad.

15.It is made clear that the Hon'ble Apex Court and this Court have clearly held in number of cases that no cause of action would arise merely on the premise that statutory notice caused to be issued from a different place other than the place where the transaction had taken place. In the cases on hand, as per the amendment, the cases have to be transferred to the courts having concerned jurisdiction, since the filing of all these complaints are without jurisdiction.

16.In the result, all these criminal original petitions are allowed and as per the amendment, the learned Magistrate is directed to pass suitable orders for transfer the same to the Jurisdictional Court at Hyderabad. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

The II Additional District Munsiff Court,
Pondicherry.

+2 CCS to Mr.C.Sundaresan, Advocate sr 43324.

CrI.O.P.Nos.17925 to 17931 of 2010
and

M.P.Nos.1,1,1,1,1,1 & 1 of 2010
सत्यमेव जयते

SP(22/03/2019)

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