

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

Crl.O.P.Nos.4090 to 4095 of 2011
and
M.P.Nos.1 (6) of 2011

Ani Chennai Exports Pvt. Ltd.,
Rep. By its Director,
Naresh Mangaram Mahtani .. Petitioner in Crl OP No.4090/2011/
1st Accused

Ani Industries LLC (USA)
Rep by its Directors Mr. Naresh Mangaram Mahtani,
United States of America ... Petitioner in Crl OP No.4091/2011/
2nd Accused

Naresh Mangaram Mahtani
Director : Ani Chennai Exports Pvt Ltd.,
Director : Ani Industries LLC (USA)
New York .. Petitioner in Crl OP No.4092/2011/
3rd Accused

Sulochana Naresh Mahtani
Director : Ani Chennai Exports Pvt Ltd.,
Director : Ani Industries LLC (USA)
New York .. Petitioner in Crl OP No.4093/2011/
4th Accused

Ritesh Naresh Mahtani
Director : Ani Chennai Exports Pvt Ltd.,
New York .. Petitioner in Crl OP No.4094/2011/
5th Accused

Navin Naresh Mahtani
Director : Ani Chennai Exports Pvt Ltd.,
New York .. Petitioner in Crl OP No.4095/2011/
6th Accused

Vs.

M/s.Hema Textiles,
Rep. By its Partner,
A.Selvam .. Respondent/Complainant in all Crl OPs

Prayer: There Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the records in C.C.No.317 of 2008 on the file of the Judicial Magistrate No.V, Salem and quash the same.

For Petitioner : Mr.V.P. Raman

For Respondent : Mr.K. Selvaraj

COMMON ORDER

These Criminal Original Petitions are filed by the respective petitioners / accused nos.1 to 6 to quash the proceedings pending against them in C.C.No.317 of 2008 on the file of the learned Judicial Magistrate No.V, Salem. The said proceedings came to be instituted at the instance of the respondent / complainant for the commission of offence under Section 138 r/w 141 of the Negotiable Instruments Act.

2. Since the issue involved in all the cases are one and the same and the grounds raised thereto are also the same, all the petitions are taken up together and are disposed of by way of this common order. For the sake of convenience and clarity, the parties are referred to as per their rank before the trial Court.

3. The case of the complainant is that there was a business transaction between the complainant and the accused, in terms of which, the complainant supplied materials as per the purchase order to the accused, on credit basis. The accused nos.1 & 2 are companies and the rest of the accused are its Directors. In discharge of the liability, several cheques were issued to the complainant and when they were presented for collection, all of them got dishonored due to insufficient funds. The respondent / complainant issued statutory notices, followed by which, the present complaint under Section 138 of the Negotiable Instruments Act came to be lodged.

4. Heard the learned Counsel appearing for the respective parties and perused the documents placed on record.

5. In all these petitions, the petitioners have raised a similar ground that admittedly, the cheques in question were issued by the second accused, namely, M/s.Ani Industries LLC (USA), which is a limited liability company, having its registered office at USA and the cheques were also drawn at USA. Therefore, the very initiation of the proceedings before the learned Judicial Magistrate No.V, Salem, suffers from lack of jurisdiction, as such, the learned Counsel prays for quashing the impugned proceedings.

6. In addition to the same, accused nos.1, 3 to 6 have raised another ground that admittedly, the cheques were issued by the second accused Company only and they are not the signatories. Moreover, there are no averments attributing any specific role for them in the affairs of the second accused company, as such, the impugned proceedings is liable to be quashed.

7. But, on a perusal of the complaint, it is seen that specific averments have been made as against accused nos.3 to 6 that they are the Directors and they are actively involved in the day-to-day affairs of the company. Insofar as the first accused company is concerned, it is averred that the second accused company is a sister concern of the first accused company. When there are specific averments available regarding Directorship and sister concern, it involves adjudication of disputed question of facts, which needs evidence and therefore, on this ground, the impugned proceedings cannot be quashed.

8. Insofar as the first ground regarding jurisdiction is concerned, though the Cheques were issued by a company at USA, they were presented for collection before the Federal Bank, Salem, where they were dishonored. Since a draft cause of action has arose at Salem, this ground is also liable to be rejected.

9. At this juncture, the learned Counsel for the petitioners / accused sought indulgence of this Court to dispense with the personal appearance of accused nos.3 & 4, taking into account of their age and medical ailments. In view of the same, the personal appearance of accused nos.3 & 4 alone is dispensed with, provided they file an affidavit before the learned Judicial Magistrate No.V, Salem, undertaking that they will appear before the trial Court as and when it is specifically required. Considering the age of the proceedings, the learned Judicial Magistrate No.V, Salem, is directed to proceed with the trial and dispose of the same within a period of four months from the date of receipt of a copy of this order.

10. With the above observations and directions, these criminal original petitions are disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

msm/gk

To

1.The Judicial Magistrate No.V, Salem.

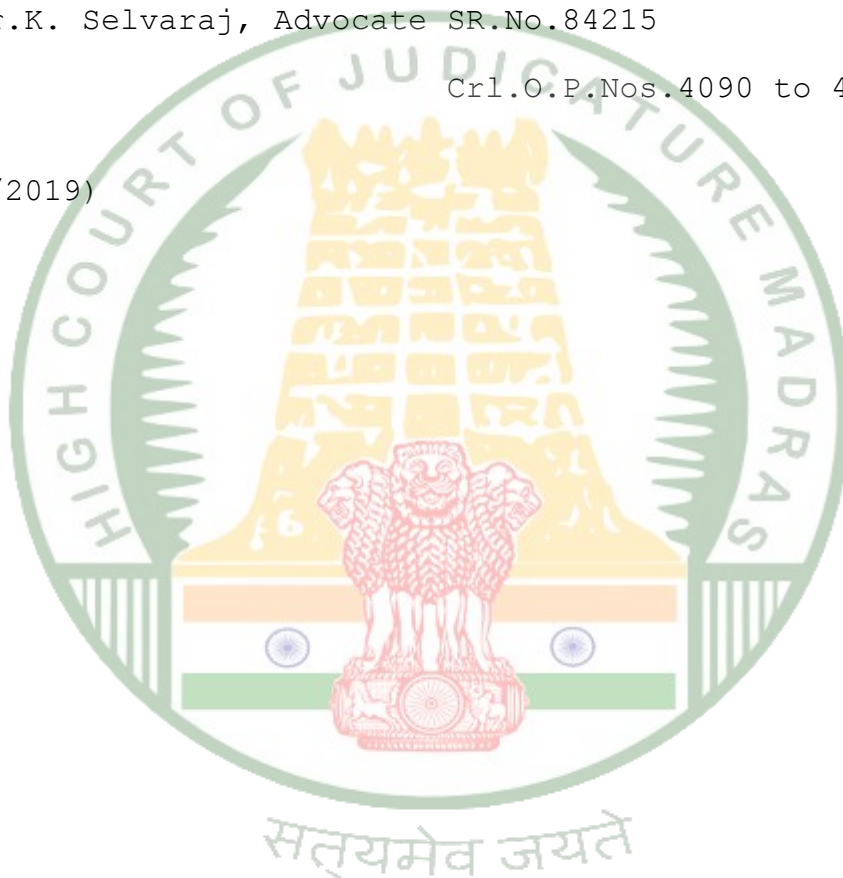
2. -do-Through Chief Judicial Magistrate, Salem

+lcc to Mr.V.P. Raman, Advocate SR.No.84260

+lcc to Mr.K. Selvaraj, Advocate SR.No.84215

Cr1.O.P.Nos.4090 to 4095 of 2011

SR(CO)
GMY(20/09/2019)



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