IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.07.2018

Pronounced on : 26.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.8146 of 2011
and
M.P.No.1 of 2011

1.M/s.Vanaja Textiles Limited,
A company registered under the,
Indian Companies Act,
Kuchikkara Post, Thirissur,
Represented by its Managing Director,
M.N.Marudachalam.

2.M.N.Marudhachalam,
S/o.Late Nanjappa Chettiar.

3.M.N.Thirunavukkarasu,
S/o.Late Nanjappa Chettiar.

4.N.M.R.Sarguru,
S/o.N.Marudachalam. ... Petitioners/Accused

Vs.

Venkatachalam
S/o.Myilsami Chettair. ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in S.T.C. No.2248 of 2010 on the file of the Judicial Magistrate Court No.I, Tirupur and quash the same.

For Petitioners : Mr.A.Ramesh Senior Counsel for Mr.S.Saravanan

For Respondent : No Appearance (Name Printed)

O R D E R

The petitioners herein who are accused in the private complaint filed by the respondent for the offence under Section 138 of Negotiable Instruments Act pending trial in S.T.C.No.2248 of 2010 on the file of the Judicial Magistrate Court No.I, Tiruppur has filed this quash petition.

2.Notice was served to the respondent on 22.05.2017, despite receipt of the notice and printing the name of the respondent in the cause list, the respondent failed to appear. Keeping the case pending further would serve no purpose and the case is pending from the year 2010, hence, this Court proceed on merits based on the records and materials submitted.

3.The case of the complainant is that the 1st accused is a company having its registered office at Trissur, the accused Nos.2 and 4 are the Managing Directors of the 1st accused and the 3rd accused is the Director of the 1st accused company, all the Directors 2 to 4 are responsible and liable for the conduct of the 1st accused company. The accused Nos.1 to 4 are the petitioners herein. The petitioners were running a spinning mill, which ran into trouble, since the petitioners have several problems, ran into debts and the 1st petitioner was to pay huge amounts to the banks the petitioner Nos.1 to 3 had approached the respondent and entered into a Memorandum of Understanding on 15.11.2007. As per the Memorandum of Understanding the entire schedule items were agreed to be sold to the respondent for a total sum of Rs.2,41,00,000/- and on the date of Memorandum of Understanding Rs.2 lakh was paid as advance and other conditions were also incorporated in the said Memorandum of Understanding. Thereafter, the respondent had paid Rs.4 lakh in two instalments in cash, thus, the respondent had paid Rs.10 lakh in total. When the respondent approached the complainant for taking delivery of the schedule properties as per Memorandum of Understanding. The accused informed that there are several debts and they are trying for a one time settlement from their bankers and represented that Rs.14 lakh would be paid as compensation for the advance amount received. Thereafter, on 20.09.2008 the petitioners and respondent met at the office of one Rajagopal at that time the 4th petitioner informed that the entire mill property and machinery covered under Memorandum of Understanding was offered Rs.17 Crores by another party and sizable amount would be paid to the respondent apart from the advance amount of Rs.10 lakh. Finally, it was agreed that Rs.24 lakh would be paid by the petitioners which is Rs.10 lakh of advance received and Rs.14 lakh towards compensation. The Memorandum of Understanding was cancelled.

4.It is further averred that the petitioners had entered into a fresh agreement in July 2009 with one St.George Metals. From the St.George Metals, the respondent had received Rs.14 lakh in the account of Mahalakshmi Cotton Traders, of which the respondent is the Proprietor. It is further averred that a cheque dated 02.11.2009 for Rs.10 lakh bearing No.352363 of Tamil Nadu Mercantile Bank, which was issued in discharge of the liability, when he presented the cheque with his bankers the same was not honoured, on the other hand the petitioners had given stop payment instructions. Thereafter, notice was issued on 12.12.2009, the respondent had issued a reply notice dated 30.12.2009 denying their liability and calling upon the respondent to make the balance payment of Rs.4,49,000/-. Thereafter, the complaint came to be filed.

5.The counsel for the petitioners submit that the petitioners had given Stop payment advice to their bankers since the respondent failed to return the cheque, when the advance payment of Rs.10 lakh was paid and attempted to use the same to enrich himself. On the date of stop payment there was sufficient balance in their account. Further, it is submitted that there is no legally enforceable debt. Further, it is the admitted case of the respondent that he has made a payment of Rs.10 lakh for which there is acknowledgement. It is an admitted case that the petitioners company sale was a distress sale and they were awaiting one time settlement from their bankers namely Central Bank of India to clear their Non Performing Asset Account for which they were scouting for various persons. The Memorandum of Understanding entered between the petitioner and the respondent was on 15.11.2007 and to be completed within a period of 45 days, the respondent failed to make a payment of Rs.20 lakh in the lien account, due to which the OTS approval could not be obtained from Central Bank of India and thereafter, with great difficulty they had M/s.St.George Metals, who agreed for the payments to be made to the bank and clear the OTS. It is admitted in the complaint by the respondent that after an agreement entered between the petitioner and M/s.St.George Metals in July 2009 Rs.14 lakh has been received by the complainant. This payment is on the account of the petitioners. There is nowhere in the complaint that this amount of Rs.14 lakh had been received by the respondent for some other transaction or consideration. The payment of Rs.14 lakh by M/s. St. George Metals to the respondent was on the account of the petitioners. It is also admitted that only Rs.10 lakh has been paid as advance and thereafter, the Memorandum of Understanding could not be proceeded as agreed upon and by an endorsement dated 04.07.2009 both the petitioner and the respondent have cancelled the Memorandum of Understanding with the following endorsement.

"We both mutually agree to cancel this M.O.U. today. We both parties agree that there is no claim under this M.O.U."

6.In view of the above contention of the petitioners is that a security cheque which has been given on receipt of Rs.10 lakh when Memorandum of Understanding dated 15.11.2007 was entered upon between the petitioners and the respondent have been attempted to be made and projected as though it was issued on 02.11.2009 when the entire dues more and above have been discharged by agreement. Fortified to the fact, that the dishonor of the cheque was due to stop payment instructions and there was sufficient balance in the account of the petitioners on the date of dishonour of the cheque.

7.In view of the above, this court finds that the continuation of the proceedings against the petitioners is an abuse of process of law.

8.In the process this Criminal Original Petition is allowed and the proceedings against the petitioners in S.T.C.No.2248 of 2010 on the file of the Judicial Magistrate Court No.I, Tiruppur stands quashed. Consequently, the connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.I,
Tirupur

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Saravanan, Advocate SR.No.73439

Crl.O.P.No.8146 of 2011

SVI (CO)

GMY(26/11/2018)