IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 20.04.2018

DELIVERED ON: 05.06.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.Nos.10510 and 10511 of 2011 &
Crl.M.P.Nos.1 to 3 of 2011

1. Ms.D. Anuradha .. Petitioner in Crl.O.P.10510/2011
2. Mr.D. Jeyapal .. Petitioner in Crl.O.P.10511/2011

//vs//

M/s Book Zilla,
represented by its Partner
R.Ranganatha Prabhu, having office at
No.5/241-F, Maiyanoor Rathna Arcade,
Five Roads, Salem 636 004. ... Respondent in both Crl.O.Ps

Prayer in Crl.O.P.Nos.10510 and 10511 of 2011
Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in C.C.No.198 of 2010 on the file of the Judicial Magistrate Court No.V, at Salem and to quash the same as against the petitioner.

For Petitioners : Mr.T.T. Ravichandran
(in both Crl.O.Ps.)

For respondent : Mr.K. Selvaraj
(in both Crl.O.Ps.)

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COMMON ORDER

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Heard Mr.T.T.Ravichandran, learned counsel appearing for the petitioner and Mr.Rajasekaran, learned counsel appearing for the 1st respondent and Mr.K.Selvaraj, learned counsel appearing for the respondent.

2. D.Anuradha, petitioner in Crl.O.P.No.10510 of 2011 and D.Jeyapal, petitioner in Crl.O.P.No.10511 of 2011, who are arrayed as accused No.6 and 3 respectively in C.C.No.198 of 2010 on the file of the Judicial Magistrate No.V, Salem, have filed the present petitions under Sections 482 of Criminal Procedure Code to quash the proceedings in C.C.No.198 of 2010 as against

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them.

3. The respondent M/s Book Zilla, represented by its partner R.Ranganatha Prabhu has filed a private complaint under Section 200 of Criminal Procedure Code in C.C.No.198 of 2010 before the Judicial Magistrate No.V, Salem against 6 persons namely 1. Archana Educational and Charitable Trust, represented by its Managing Trustee Mrs. J.Archana Kumari, 2. Ms.J.Archana Kumari, Managing Truestee of Archana Educational and Charitable Trust, 3.Mr.D.Jayalap, Director, Archana Institute of Technology, 4. Mr.S.Hariharan, Director, Archana Institute of Technology, 5. Mr.J.Anna Andrews, Director, Archana Institute of Technology, Mrs.D.Anuradha Truestee of Archana Educational and Charitable Trust, as respondents for an alleged offence punishable under Section 138 of Negotiable Instruments Act. The case of the respondent/complainant is that they supplied books to M/s Archana Educational and Charitable Trust (A1), an educational institution, valued at Rs.15,24,416/-, that the accused 1 to 6, who are running the said institution, paid only a sum of Rs.40,000/- and issued 3 cheques towards part payment of balance amount as mentioned below.

Sl No	Cheque Number and Date	Drawn on	Amount
1	286916 dated 10.06.2009	Indian Overseas Bank, Thimmapuram, Krishnagiri District	5,00,000
2	286917 dated 18.06.2009	Indian Overseas Bank, Thimmapuram, Krishnagiri District.	5,00,000
3	286918 dated 25.06.2009	Indian Over Seas Bank, Thimmapuram, Krishnagiri District.	3,64,416

These cheques were signed by J.Archanakumari (A2). According to the respondent/complainant, the accused No.2 to 6 are jointly managing the trust and they are also taking part in the day today affairs of the trust. When the respondent/complainant presented 2 cheques out of 3 cheques for encashment through their bankers namely Canara Bank, Alagapuram Branch, Salem on 10.12.2009, they were returned for the reason " insufficient funds ". Therefore, the respondent/complainant issued a notice dated 28.12.2009, calling upon the accused to make good the payment. Since the notice was returned with an endorsement " addressee not in station and not returned even after 7 days".

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The respondent addressed a letter to the Post Master, Thimmapuram and the Chief Post Master, Chennai, requesting them to furnish details with regard to the delivery of notice to the institution and its trustees, during the period from 30.12.2009 to 06.01.2010. Since the respondent did not receive any communication from the above said persons, he sent another notice dated 09.01.2010 to the accused 1 to 6 which was also returned with an endorsement "not come forward to receive even after intimation". Therefore, the respondent/complainant filed the complaint against the accused No.1 to 6 for an offence punishable under Section 138 of Negotiable Instruments Act, before the Judicial Magistrate No.V, Salem. The Judicial Magistrate No.V, Salem, took cognizance of the offence and issued summons to the accused. Now, the present petitions have been filed under Section 482 of Criminal Procedure Code on the following grounds:-

(i) Since the 2nd accused alone had signed the cheque on behalf of the first accused trust, the petitioners cannot be held responsible for the alleged offence under Section 138 of Negotiable Instruments Act. Apart from this, the petitioners being only eo-nominees of the trust, cannot be fastened with any liability and the provisions of Section 141 of the Negotiable Instruments Act have not also been strictly complied with by the respondent/complainant.

(ii) Though the cheques were dishonoured on 18.12.2009, the complaint has been filed only on 18.02.2010 and hence, the complaint is barred by limitation.

4. At the outset, it may be observed that the petitioners have not produced a copy of the trust deed before this court to show that the petitioners are only eo-nominees of the trust. At this juncture, it is to be pointed out that it is settled law that the trust either private or public/charitable or otherwise is a juristic person, who is liable for punishment for the offence under Section 138 of Negotiable Instruments Act and a trust either private or public/charitable or otherwise having either a single trustee or two or more than trustees, is a company in terms of Section 141 of the Negotiable Instruments Act. Therefore, for the offence under Section 138 of Negotiable Instruments Act committed by the trust, every trustee, who was in charge of the day today affairs of the trust, also be liable for punishment besides the trust. Now, it is to be examined as to whether the respondent/complainant had shown prima facie materials in their complaint to proceed against the present petitioners (accused 3 & 6).

5. The learned counsel appearing for the petitioners relied on the decision in Pooja Ravinder Devidasani vs. State of Maharashtra and another reported in (2014) Supreme Court Cases 1 and contended that the respondent/complainant has not

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explained neither the role of the petitioners in the affairs of the company nor the manner in which the appellants are responsible for the conduct of business of the trust, during the relevant period. It is also his contention that before a Magistrate takes cognizance of the offence under Sections 138 and 141 of the Negotiable Instruments Act, he should ensure whether an accused under Section 138 of the Negotiable Instruments Act is vicariously liable and that mere verbatim reproduction of the Clause under Section 141 of the Negotiable Instruments Act, without clear statement of facts supported by proper evidence is a ground for quashing the proceedings against such persons under Section 138 of Negotiable Instruments Act.

6. A perusal of the complaint shows that there are sufficient averments to the effect that these petitioners being trustees were in charge of the trust. As already observed, the petitioners have not produced a copy of the Trust Deed to show that they are only eo-nominees of the trust. Therefore, I hold that there are prima facie materials available to proceed against the petitioners herein.

7. The contention of the petitioners is that since the cheques were returned on 18.12.2009 and the complaint is filed only on 18.02.2010, the complaint is barred by limitation. It is to be pointed out that the cause of action to file a complaint against respondent/payee, holder of a cheque in due course if,

a) the dishonoured cheque is presented to the drawer bank within a period of 6 months from the date of its issue.
b) if the complainant is demands payment of cheque amount within 30 days of receipt of information by him from the bank regarding dishonoured cheque, and
c) if drawer has failed to pay the cheque amount within 15 days of receipt of such notice.

As for as the present case is concerned, the complainant has received intimation from the bank with regard to the dishonour of cheque on 18.12.2009. He has issued the first notice on 28.12.2009 and since the notice was not served to the accused, he issued another notice dated 09.01.2010. Both the notices were issued within a period of one month from the date of dishonour of cheques and the complaint is filed on 18.02.2010. Therefore, I hold that the complaint is filed within the prescribed period of limitation.

8. Since the Judicial Magistrate No.V, Salem, has rightly taken the complaint on file and took cognizance of the offence under Section 138 of Negotiable Instruments Act, I do

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not see any reason to quash the proceedings under Section 482 of Criminal Procedure. Hence, these criminal appeals are liable to be dismissed.

9. In the result, Criminal Original Petition Nos.10510 and 10511 of 2011 are dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar(CS-IV)

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Sub-Assistant Registrar

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To

The Judicial Magistrate No.V,
Salem.

+2 CCS to Mr.K. Selvaraj, Advocate sr 34710 & 34711.

Crl.O.P.Nos.10510 & 10511 of 2011

SP(08/06/2018)

HIGH COURT OF JUDICATURE MADRAS
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