

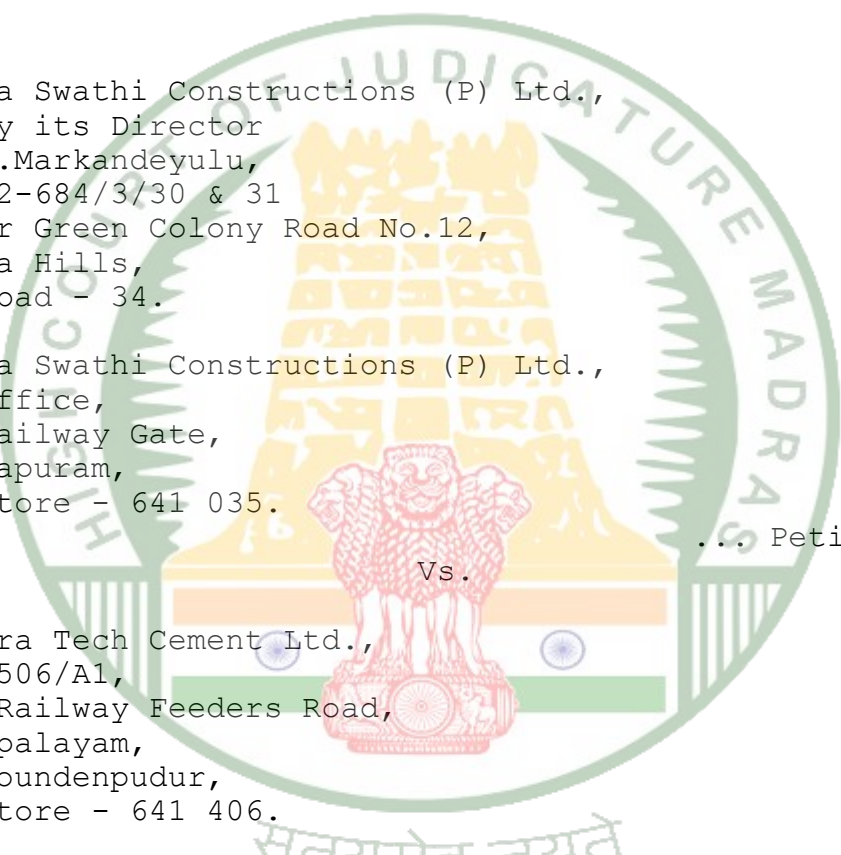
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.7079 of 2013
and
M.P.Nos.1 & 2 of 2013

- 
1. M/s.Siva Swathi Constructions (P) Ltd.,
Rep. by its Director
Shri B.Markandeyulu,
H.O.8-2-684/3/30 & 31
Banjaar Green Colony Road No.12,
Panjara Hills,
Hyderabad - 34.
2. M/s.Siva Swathi Constructions (P) Ltd.,
Site Office,
Near Railway Gate,
Najundapuram,
Coimbatore - 641 035.
- ... Petitioners
- Vs.
1. M/s.Ultra Tech Cement Ltd.,
SF No.506/A1,
Sulur Railway Feeders Road,
Kurmbapalayam,
Muthugoundenpudur,
Coimbatore - 641 406.
2. M/s.Jayam Constructions,
Rep. by its Proprietor
Mr.V.Ravichandran,
Navat CM Nagar,
Back Side of Om Sakthi Nagar,
Bharathi Nagar,
Ganapathy, Coimbatore - 06.
- ...Respondents
- सत्यमेव जयते
- WEB COPY

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to quash S.T.C.No.551 of 2012 on the file of Judicial Magistrate No.I, Coimbatore.

For Petitioners : Mr.V.Vijay Shankar

For Respondent No.1 : Mr.D.Kangasundaram

O R D E R

This petition has been filed by the accused Nos.1 and 2 to quash the proceedings against them in S.T.C.No.551 of 2012 on the file of the Judicial Magistrate No.1, Coimbatore.

2. The learned counsel for the petitioners has submitted that the first respondent herein has filed a private complaint under Section 138 of the Negotiable Instruments Act and based on the same, the Judicial Magistrate No.1, Coimbatore has taken the case on file in S.T.C.No.551 of 2012 and issued summons to the petitioners and after receipt of the summons, the petitioners herein have filed the present petition for quashing the proceedings against them. He further submitted that as per the allegations made in the complaint, it is only the third accused, the second respondent herein who had issued two cheques in favour of the first respondent for the amount due to him for supply of concrete mixture. He further submitted that in the complaint, it is stated that the petitioners herein are the main contractors for constructing railway overbridge at Nanjundapuram and the third accused is the subcontractor and only at the request of the petitioners 1 and 2 herein, the first respondent had supplied concrete ready mix. He further submitted that even in the reply notice itself, the petitioners herein have categorically denied the allegations that they are not the main contractors and the third accused has not worked as subcontractor under them and also denied the allegations that the first respondent has issued the cheques at the instance of the petitioners 1 and 2.

3. The learned counsel for the petitioners relying upon the decision in N.Gopalan Vs. K.Udhayakumar, 2009 (4) CTC 217 and Hari Fabrics Vs. Kulandaivel, 2013 (6) CTC 844 submitted that for prosecuting a person for the offence under Section 138 of Negotiable Instruments Act, the cheque should have been issued by him on the account maintained by him with a banker. He further submitted that in this case, admittedly the third accused alone issued cheque and the petitioners are in noway connected with the said cheque and therefore, the proceedings against the petitioners herein may be quashed.

4. Per contra, the learned counsel for the first respondent has submitted that the first respondent used to supply ready mix concrete regularly to the petitioners 1 and 2. He further submitted that usually the orders would be given over phone and hence no documentary evidence is available. He further submitted that the statutory notice was issued to all the three accused and after receipt of the said notice only the petitioners herein have sent reply but third accused has not sent reply. He further submitted that under the circumstances, the petitioners may be directed to contest the case before the trial Court itself.

5. The first respondent has categorically averred in the complaint that only the third accused viz., second respondent herein has issued cheques in favour of the first respondent. Though, it is stated that the first respondent has supplied ready mix concrete to the accused No.2, no proof has been filed to substantiate the said allegations.

6. In N.Gopalan Vs. K.Udhayakumar (supra) this Court has observed in Paragraph No.10 as follows:

"10. To prosecute a person for an offence under Section 138 of the Negotiable Instruments Act, the cheque should have been issued by him on an account maintained by him with a banker. The opening words of Section 138 of the Negotiable Instruments Act reads as follows:

"Where any cheque drawn by a person on an account maintained by him with a banker...."

Only he who issued the cheque drawn on an account maintained by him can be prosecuted for an offence under Section 138 of the Negotiable Instruments Act. In this case, admittedly the cheque was not drawn on an account maintained by the petitioner herein and the same was drawn on an account maintained by the wife of the petitioner in the name of the proprietary concern run by her. The judgements of the Apex Court and this Court cited above squarely apply to the facts of the case on hand."

7. In Hari Fabrics Vs. Kulandaivel (Supra) has observed in paragraphs 7 to 9 as follows:

7."The Hon'ble Supreme Court in the decision reported in Aparna A. Shah V. Sheth Developers Pvt. Ltd, and another, 2013 (2) MWN (Cr.) DCC 97 (SC) : 2013 (8) SCALE 140, has held as follows:

8. In order to constitute an offence under Section 138 of the N.I.Act, this Court, in Jugesh Sehgal Vs. Shamsheer Singh Gogi, 2009 (14) SCC 683, noted the following ingredients which are required to be fulfilled:

" (i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;

(ii) that cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) that cheque has been presented to the Bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier:

(iv) that cheque is returned by the Bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the Bank.

(v) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque. within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act"

Considering the language used in Section 138 and taking note of background agreement pursuant to which a cheque is issued by more than one person, we are of the view that it is only the "drawer" of the cheque who can be made liable for the penal action under the provisions of the N.I.Act. It is settled law that strict interpretation is required to be given to penal statutes." सत्यमेव जयते

8. Admittedly, the Petitioners/A-1 & A-2 are not the drawers of the cheque, even as per the allegations made in the complaint. In the light of the ratio laid down in the above cited decisions, the Petitioners/A-1 & A-2 viz. endorser, cannot be prosecuted for the alleged commission of the offence under Section 138 read with 142 of the N.I.Act.

9. In the result, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.4573/2006, pending on the file of the Court of Judicial Magistrate, Tiruchengode, are quashed. It is made clear that the findings/observations made herein, are only for the purpose of disposal of this Petition and the Trial Court need not be influenced by the same while proceeding against the other

Accused and the Respondent herein is also at liberty to work out his Civil remedy before the competent forum in accordance with law.

8. As already pointed out that in this case also the petitioners/A1 and A2 are not the signatories of the cheque even as per the allegations made in the complaint. Thus the aforesaid decision will squarely apply to the facts of the case. Therefore the petitioners herein cannot be prosecuted for the alleged commission of offence under Section 138 of the Negotiable Instruments Act.

9. In the result, this Criminal Original Petition is allowed and the proceedings in STC No.551 of 2012 on the file of the Judicial Magistrate No.1, Coimbatore are quashed against the petitioners herein. It is made clear that the findings/observations made herein, are only for the purpose of disposal of this petition and the trial Court need not be influenced by the same while proceeding against the third accused/Second respondent herein.

10. Considering the fact that STC.No.551 of 2012 is pending for the past 6 years, the learned Judicial Magistrate - I, Coimbatore is directed to expedite the trial against the third accused and dispose of the same within a period of three months from the date of receipt of a copy of this order. Consequently connected Miscellaneous Petitions are closed.
dh

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

TO

1. The Judicial Magistrate No.I, Coimbatore.

+ 1 cc to Mr.D.Kangasundaram, Advocate Sr 67270

KR/31/10/18

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