IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Crl.OP.No.8298 of 2013
and M.P.No.1 of 2013

1. M/s.Global Trendz Ltd.,
   A Company incorporated under the
   Companies Act 1956,
   Represented by its Managing Director,
   Aditya Ashok Jalan,

2. Aditya Ashok Jalan,
   Managing Director and authorized Signatory,
   M/s.Global Trendz Ltd.,

3. Aditi Aditya Jalan
   Director and authorized Signatory,
   M/s.Global Trendz Ltd.,

4. Mr.Anurag Jatia
   Director and authorized Signatory,
   M/s.Global Trendz Ltd.,

5. Mr.Gaurang Agarwal,
   Director and authorized Signatory,
   M/s.Global Trendz Ltd.,

6. Mr.Hirendra Kumar Ghansh kanabar,
   Director and authorized Signatory,
   M/s.Global Trendz Ltd., ... Petitioners

Vs.

M/s.Pranav Impex,
A partnership firm,
Represented by its Managing Partner,
C.Ravichandran,
D.No.9, South Garden,
Thanga Gounder Layout,
Dharapuram Road,
Tirupur. ...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in C.C.No.556 of 2012 pending on the file of the Judicial Magistrate, No.1, Tirupur and quash the same as illegal.

For Petitioners : Mr.N.Baskaran
For Mr.A.Balamurugan

For Respondent: No appearance

O R D E R

This Criminal Original Petition has been filed by the accused persons 1 to 6 to quash the proceedings against them in C.C.No.556 of 2012 on the file of the learned Judicial Magistrate No.1, Tirupur.

2. The respondent herein has filed a private complaint under Section 138 of the Negotiable Instruments Act, alleging that the respondent firm is engaged in the business of manufacturing and supplying of hosiery garments. The first accused is a private limited Company and the second accused is a Managing Director and other accused persons are Directors of the said Company. The first accused Company commenced its credit purchase business with the complainant firm from September 2009 and the account was closed. In the month of September 2011, in the said transactions, the first accused company was totally liable to pay a sum of Rs.1,20,88,717/- and in order to discharge the said debt, the first accused Company has issued 24 post-dated cheques.

3. Subsequently, the first accused Company has paid a sum of Rs.86,00,000/- to the complainant and received back the 22 post-dated cheques. As per the books of accounts maintained by the respondent/complainant Company the accused Company is liable to pay a sum of Rs.25,56,139/-. The accused Company issued two post-dated cheques, one is for a sum of Rs.5,34,409/- and another one for a sum of Rs.4,00,000/- towards partial discharge of debt due to the respondent. The respondent has presented the said cheque in the bank for encashment on 02.03.2012. The said cheques were returned as ''payment stopped'' by the drawer. Hence, the respondent has issued a statutory notice on 19.03.2012. The accused persons have received the said notice and instead of making payment, they sent a reply notice dated 03.04.2012 with false averments. Hence, the respondent has filed a private complaint to punish the accused persons under Section 138 of the Negotiable Instruments Act.

4. Based on the aforesaid complaint, the learned Judicial Magistrate, No.1. Tiruppur, has taken the case on file, in C.C.No.556 of 2012 and issued summons to the accused persons 1 to 6. After receipt of the summons,

the accused 1 to 6 have filed the present petition under Section 482 Cr.P.C. to quash the proceedings against them in C.C.No.556 of 2012 on the file of the learned Judicial Magistrate No.1, Tiruppur.

5. Though the Court notice was served on the respondent, the respondent has not appeared either in person or through his counsel. Hence, after hearing arguments of the learned counsel for the petitioners and on perusal of the records, order is being passed in this petition.

6. The learned counsel for the petitioners has submitted that on 21.10.2011, the agreement of settlement was executed between the first petitioner/accused and the respondent. As per the said agreement of settlement, it was agreed that the first accused has to pay a sum of Rs.86,00,000/- (Rupees Eighty Six Lakh only) of which an amount of Rs.11,96,413/- (Rupees Eleven Lakhs Ninety Six Thousand Four Hundred and Thirteen only) shall be payable to Pyramids and a sum of Rs.74,03,587/-(Rupees Seventy Four lakhs Three Thousand Five Hundred and Eighty Seven only) shall be payable to Pranav, in four installments. He further submitted that in pursuance of the said agreement, the petitioners herein have paid the entire amount due to the respondent and acknowledging the same, the respondent gave a letter on 14.12.2011 stating that the petitioners herein have handed over the demand draft for a sum of Rs.2,46,281/- and another one for Rs.3,28,805/- and hence, the respondent has returned four cheques and also stated that the cheque bearing No.866148 for a sum of Rs.4,00,000/- and cheque bearing No.994781 for a sum of Rs.5,34,409/- are in the custody of their bank, Tiruppur (UCO Bank) and they will get back and return to the petitioners and also assured that they will not take any legal action. He further submitted that subsequently on 28.02.2012, the first petitioner has sent an e-mail to the respondent requesting him to return the aforesaid cheques and the respondent has replied that the said cheques were deposited with the bank and that the bank insisted them to settle the dues and that they are not in a position to return the aforesaid cheques. He further submitted that thereafter, the respondent has presented the cheques in the bank for encashment and issued a statutory notice demanding the amount. He further submitted that after receipt of the said notice, the petitioners herein have sent a suitable reply on 03.04.2012, stating that no amount is due to the respondent and even thereafter, the respondent has filed a private complaint with a view to get wrongful gain and hence he requested to quash the proceedings against the petitioners.

7. It is seen from the typed set of papers filed by the petitioners that the respondent has filed a private complaint against the petitioners herein to punish them under Section 138 of the Negotiable Instruments Act. In the said complaint, the respondent has stated that as per the accounts maintained by them, a sum of Rs.1,20,88,717/- is liable to be paid by the petitioners herein but they have paid only a sum of Rs.86,00,000/- and received back the 22 post-dated cheques. It was further stated that a sum of Rs.25,56,139/- is due from the accused persons and that towards partial discharge of the said debt/liability, the accused Nos.1 and 2 have issued post-dated cheques on behalf of the first accused, one cheque is dated 11.09.2011 bearing cheque No.994781 for a sum of Rs.5,34,409/- and another cheque dated 07.09.2011 bearing cheque No.866148 for a sum of Rs.4,00,000/-. It was further stated that when the said cheques were presented in the bank on 02.03.2012, the said cheques were returned as "payment stopped" by the drawer in the month of September 2011 itself and hence the statutory notice has been issued. It was further stated that the accused persons, after receipt of the statutory notice have sent a reply notice dated 03.04.2012 with false averments. Along with the said complaint, the reply notice which was sent by the accused persons dated 03.04.2012 also enclosed.

8. A perusal of the said reply notice shows that the petitioners herein have categorically stated that the dispute between the parties was resolved by the settlement of agreement dated 21.10.2011 and in pursuant to the said agreement, they have paid the entire dues. The respondent herein wrote a letter to the first petitioner on 14.12.2011 stating that the two cheques were in the custody of their bank and would be returned within ten days and also assured that they will not take any legal action. But, in the complaint, the respondent has not denied the aforesaid allegations made in the reply notice. Inspite of the said reply notice, the respondent has filed a complaint against the petitioners herein. The letter dated 10.12.2011 and e-mail dated 29.02.2012 also would show that the respondent has categorically admitted that the petitioners herein have discharge the entire liability. So, it is clear that there is no subsisting liability and therefore, the petitioners are not liable to pay any amount to the respondent for the cheques mentioned in the complaint.

9. Therefore, this Court is of the view that the continuance of the proceedings against the petitioners herein are amount to abuse of process of the Court and

hence, the proceedings against them are liable to be quashed.

10. In the result, this Criminal Original Petition is allowed and the proceedings against the petitioners in C.C.No.556 of 2012 on the file of the learned Judicial Magistrate No.1, Tirupur are quashed. Consequently, the connected miscellaneous petition is closed.

Sd/--
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The learned Judicial Magistrate No.1,
Tirupur.

Crl.OP.No.8298 of 2013
and M.P.No. 1 of 2013

A.SK(13/02/2019)