IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Reserved on : 02.03.2018)

(Pronounced on : 11.06.2018)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.O.P.No.23129 of 2011
and
M.P.No.1 of 2011

1.M/s.NPS Tech Molds Pvt.Ltd.,
By its Managing Director Mr.D.Joel,

2.Mr.D.Joel,
Director,
M/s.NPS Tech Molds Pvt.Ltd.,

3.Mr.Pattabi,
Director,
M/s.NPS Tech Molds Pvt.Ltd.,

4. Mr.V.Parthasarathy,
Director,
M/s.NPS Tech Molds Pvt.Ltd.,

... Petitioners/Accused 1 to 4

.. Vs ..

M/s.Vishal Precision Products Pvt.Ltd.,
Rep by its authorized rep/commercial
Assistant, Mr.R.Senthil Kumar,
Having office at "Glory Manor",
113-A, Kaveri Nagar,
Vilankurichi Road,
Peelamedu,
Coimbatore -641 004 ...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in S.T.C.No.330 of 2011 now pending on the file of the Hon'ble Judicial Magistrate VI, Coimbatore and quash the same.

For Petitioners : Mr.R.Ganesh Kumar
For Respondent : Mr.S.Mukunth for
M/s.Sarvabhauman Associates and

ORDER

This criminal original petition is filed under Section 482 of Cr.P.C., to call for the records in S.T.C.No.330 of 2011 pending on the file of the learned VI Metropolitan Magistrate, Coimbatore.

2. The brief facts which are necessary for determination of the case, are as follows:-

[i] The petitioners submit that the 1st petitioner is a company and the petitioners 2 to 4 are the Directors of the 1st accused company. The petitioners are filing this petition to quash the proceedings initiated against them for the offence under Section 138 of the Negotiable Instruments Act pending in S.T.C.No.330 of 2011 on the file of the learned Judicial Magistrate No.VI, Coimbatore.

ii) The averment set forth in the complaint is that the complainant is a Private Limited Company doing production of Mould Bases, Die-Housing and Die-sets and supplying to various industries, whereas the 1st accused had purchased the products of the complainant on credit basis on assurance to settle the invoice amount within a month. As per the purchase orders of the accused company, they had supplied the mould base products to the 1st accused on credit on various dates between 20.06.2009 and 10.07.2009, to the total value of Rs.5,79,172/- in respect of 7 Nos. of invoices of the complainant.

iii) Having got delivery of the same, the accused had not paid the respective invoice amounts within the agreed period of one month time. Thereafter, on repeated demands from the complainant, the accused made payment of a total sum of Rs.4,10,509/- by part payments on various dates between 21.08.2009 and 01.03.2010 and that there was a balance of Rs.1,68,663/- due to the complainant. Whereas, during the first week of September 2010, the accused Company had issued a cheque dated 13.09.2010 in favour of the complainant as signed by 2nd and 3rd accused jointly being the Directors of the 1st accused company for a sum of Rs.30,000/- drawn on India Overseas Bank of Alandur Branch of Chennai, towards the part payment of said balance amount due to the complainant.

iv) Later, when the complainant had presented the said cheque on 13.09.2010 for collection through their account at UCO Bank Ltd., Coimbatore Main Branch, it had been returned on 04.09.2010 as dishonoured, stating the reason as "Exceeds Arrangement". A sum of Rs.125/- was debited to the complainant's bank account towards service charges.

v) The further averment is that knowingly well that their cheque would be dishonoured for want of funds, the accused had issued the same with ulterior motive to cheat and defraud the complainant. The accused 2 to 4 being the Directors, are responsible for the day-to-day affairs of the 1st accused company involved in the above affair, issued the cheque in question knowingly well about the consequences of cheque-bouncing and they personal knew well about the consequences of cheque-bouncing and their personal liability of facing the Criminal Prosecution.

vi) The complainant had further stated that already the two cheques given by the accused viz., dated 14.07.2009 & 15.08.2009 for Rs.1,11,872/- each bounced. Later, the accused had sent a Demand Draft dated 20.08.2009 towards one dishonoured cheque only. Subsequently, another cheque dated 15.10.2009 given by the accused for Rs.1,35,775/- also got dishonoured. Thereafter, yet another cheque dated 02.03.2010 given by them, also returned as bounced for want of funds. Each time of such bouncing, the accused Company had been requesting the complainant for want of some time for arranging the funds, but failed to keep their words.

vii) Whereas while sending the aforesaiad cheque dated 13.09.2010 for the sum of Rs.30,000/- towards a small part of the balance due, the accused Company assured the complainant that it won't bounce back. But to the very great shock and surprise of the complainant, even that cheque had also bounced / dishonoured for want of funds in their bank account. So, the complainant had sent a legal notice dated 11.10.2010 to all the accused, which they acknowledged had on 13.10.2010, for which, the accused neither sent any reply nor come forward to settle the amount. The further averment is that the accused Nos.2 to 4 being the Directors of 1st accused Company, are responsible for the entire affairs of the same and personally involved in the above matter as stated above for issuance of the cheque in question and made the complainant prosecuted. Hence, the complaint.

3. The learned counsel for the petitioners has submitted that the cheque amount is for Rs.30,000/-, whereas in the statutory notice, an omnibus claim has been made calling upon the petitioners to pay the value of the cheque in question and also the entire balance due with accrued interest thereon. The omnibus notices without specifying as to what was the amount due under the dishonored cheque, would not subserve the requirement of law and the proceedings are vitiated and are liable to be quashed. Learned counsel for the petitioners relied on a decision of the Apex Court in the case of Rahul Builders-Vs-Arihant Fertilizers and Chemicals and another reported in (2008) 2 SCC 321, in which the Supreme Court has held that service of notice is imperative in character for maintaining a complaint and the same needs to be in conformity with proviso (b) of Section 138 of N.I. Act. An omnibus notices without specifying as to what was the amount due under the dishonored cheque, would not subserve the requirement of law. In the instant case, the

petitioners were not called upon to pay the amounts under the cheque issued by them, but were asked to pay the outstanding bills.

4. Per contra, the learned counsel for the respondent/complainant drew my attention to the statutory notice issued before the institution of the Complaint.

5. Heard both sides and perused the records.

6. After perusing the statutory notice, whereby, the petitioners herein were called upon to pay the value of the cheque-in-question and insofar as the contention of the petitioner that in the statutory notice, there is no specific amount in demanding the amount over and above, the cheque amount does not arise.

7. In view of the clear statement in the statutory notice, I am satisfied the statutory notice is in order and the alleged contention raised by the petitioners does not arise on the facts and circumstances of the case, especially in view of the specific statement in the statutory notice and hence, this Criminal Original Petition is dismissed.

8. With these observations, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

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To

The Judicial Magistrate VI,
Coimbatore.

+1cc to Mr.R.Ganesh Kumar, Advocate SR.No.36163
+1cc to Mr.Sarvabhauman Associates, Advocate SR.No.36342

Crl.O.P.No.23129 of 2011 and
M.P.No.1 of 2011

GN(20/06/2018)