

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.07.2018

Pronounced on : 27.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR
Crl.O.P.No.4817 of 2011
and
M.P.Nos.1 & 2 of 2011

1.M/s.Jinnah Creations,
Rep. by its Proprietor,
M.A.Jinnah.

2.Mr.M.A.Jinnah,
S/o.Mohammed Ibrahim,
Proprietor of M/s. Jinnah Creations,
Srinivasa Apartments,
Ground Floor,
Bhaskar Colony,
Virugambakkam - 600 092. Petitioners/Accused
Nos.1 & 2

Vs.

M/s. Gemini Industries and Imaging Limited,
(Unit of Gemini Colour Laboratory),
No.28, New Bangaru Colony,
West K.K.Nagar, Chennai - 600 078,
Rep. by its Authorised Signatory,
C.V.Palanivelu. Respondent/Complainant

PRAYER: Criminal Original Petition is filed under
Section 482 of the Code of Criminal Procedure, to call
for the records in C.C.No.7061 of 2009 dated 06.04.2009
on the file of the XXIII Metropolitan Magistrate Court,
Saidapet, Chennai and quash the same.

For Petitioners: Mr.S.Y.Masood

For Respondent : No appearance

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O R D E R

This Criminal Original Petition is filed to call for
the records in C.C.No.7061 of 2009 dated 06.04.2009 on
the file of the XXIII Metropolitan Magistrate Court,
Saidapet, Chennai and quash the same.

2.The petitioners/accused in a case instituted by the respondent/complainant for the offence under Section 138 of the Negotiable Instruments Act in C.C.No.7061 of 2009 pending on the file of the XXIII Metropolitan Magistrate Court, Saidapet, Chennai. The above quash petition has been filed by the petitioners/accused.

3.The case of the petitioners is that the petitioners had approached the respondent/complainant, who are engaged in the business of Cine finance and Film producing, processing and into motion picture related activities. During the course of business, the petitioners/accused had approached the complainant for finance for the film produced by them. The petitioners are the film producers, for their business needs the petitioners had approached the complainant for financial assistance entering upon into an agreement. The respondent/complainant had extended financial assistance. The cheque was issued for the loans obtained.

4.The learned counsel for the petitioners submitted that the respondent/complainant has not made out any case against the cheque in issue since the cheque was not issued in discharge of their liability as provided under Section 138 of the Negotiable Instruments Act. The respondents had already filed a Original Application No.674 of 2009 on the file of this Court for appointment of Arbitrator and also obtained interim injunction restraining the accused from alienating the property.

5.Further, the respondent/complainant had not mentioned anything about the financial assistance agreement dated 11.07.2007. As per the petitioners, the cheque in issue was given as security as per the above agreement and further, it is well settled that if a cheque is issued as security, the liability under Section 138 of the Negotiable Instruments Act will not arise.

6.Further, the learned counsel for the petitioners contended that the cheque in issue was handedover pursuant to the agreement during July, 2007 and the cheque has been dated 02.02.2009. Hence, the cheque has been presented beyond the period of six months. Hence, the case filed under Section 138 of the Negotiable Instruments Act cannot be countenanced.

7.On a perusal of the annexure 4 to the agreement, wherein reference to the cheque in issue is made. On going through it is found that a signed cheque for Rs.50,00,000/- (Rupees fifty lakhs only) drawn on Indian Overseas Bank, Saligramam Branch bearing No.985631

without filling up the date has been handed over to the complainant by the accused. Thereby, giving authority to the complainant to fill-up the date which in this case has been done. Such being the legal position, the contention of the petitioners cannot be countenanced.

8. On going through the complaint, it is seen that the respondent/complainant has complied with all the statutory requirements and had filed the above complaint.

9. The learned counsel for the petitioners has strenuously contended that based on the financial assistance agreement dated 11.07.2007 and the said cheque in the above case was issued as security and the cheque was issued on the date of agreement i.e. during 2007, but the present case was filed based on the cheque issued in February, 2009. Hence, the cheque is not the valid cheque. Further, as per the agreement, the arbitration clause is there and the respondent/complainant had after invoking arbitration cannot now resort to 138 proceedings against the petitioners/accused.

10. Further, invoking of the arbitration clause will no way affect the complainant's right to proceed the case against the petitioners under Section 138 of the Negotiable Instruments Act. Further, the complaint filed by the complainant does not have any legal infirmities.

11. In view of the above, the Criminal Original Petition filed by the petitioners is dismissed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

//True Copy// Assistant Registrar (CS-II)

Sub Assistant Registrar

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To

1. The XXIII Metropolitan Magistrate,
Saidapet, Chennai.

+1 CC TO Mr.S.Y.Masood Advocate SR.NO. 51774

PRE-DELIVERY ORDER IN
CrI.O.P.No.4817 of 2011

NRI (CO)
ASK (07/08/2018)