IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.06.2018
DELIVERED ON: 11.07.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.25756 of 2012
and
Crl.M.P.Nos.1, 2 of 2012

L.Sriram ... Petitioner/2nd accused

Vs.

1. The State of Tamilnadu,
Rep. by its Sub Inspector of Police,
Central Crime Branch EDF Wing,
Office of the Commissioner of Police,
Egmore,
Chennai-8. ... 1st Respondent/Complainant

2. Muthukumar,
Managing Partner,
M/s Penguin International,
No.132-A, 6th Cross Street,
Vijaya Nagar, Velacherry,
Chennai 600 042.
(2nd respondent was impleaded as per the order of this court in Crl.M.P.No.3 of 2012 dated 16.11.2012) .. 2nd respondent/ de-facto Complainant

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to quash the proceedings in C.C.No.3255 of 2011 on the file of XI Metropolitan Magistrate Court, Saidapet, Chennai, as far as this petitioner (2nd accused) is concerned.

For Petitioner : Mr.B.Kumar, Senior Counsel,
Mr.C.Mohan
for M/s King and Partridge

For 1st Respondent: Mr.T.Shunmugarajeswaran,
Government Advocate (Crl.Side)

For 2nd respondent M/s Swaminathan Law Associates.

ORDER

The petitioner is the 2nd accused in C.C.No.3255 of 2011 on the file of the XI Metropolitan Magistrate Court, Saidapet, Chennai.

2. The Sub Inspector of Police, Central Crime Branch Team II, Egmore, Chennai filed a final report in Crime No.288 of 2010 of the Central Crime Branch EDF Wing, Egmore against the present petitioner as well as one Prasanjirath s/o Ashok Kumar for the alleged offence punishable under Section 420 read with Section 34 of the Indian penal Code. The XI Metropolitan Magistrate, Saidapet, Chennai took cognizance of the offence and issued summons to the accused.

3. The brief facts of the case of the prosecution is as follows. The petitioner is the branch manager and Assistant Vice President of HDFC Bank, T.Nagar Branch. The de-facto complainant/2nd respondent is the Managing Partner of one Penquin International Limited, having current account with HDFC Bank, T.Nagar branch. In the course of normal business, a bank guarantee for Rs.38,25,000/- with 100% margin (in the form of FDR) was issued by the HDFC Bank, at the request of M/s Penquin International Limited to M/s Binayak Enterprises. The bank guarantee was issued on 19.01.2010 for a period of one year i.e. upto 18.01.2011 and also mentioning the claim date to be the same. The de-facto complainant M/s Penquin International Limited has alleged that despite having produced a letter dated 11.02.2010 from the beneficiary M/s Binayak Enterprises, cancelling the said bank guarantee, the petitioner went ahead paying of bank guarantee amount to the beneficiary (creditor), without even referring the matter to them. According to the de-facto complainant, the matter of issue of bank guarantee being tripartite in nature and when there was correspondence clearly mentioning that the beneficiary themselves have expressed their willingness to cancel the bank guarantee, the act of the petitioner in going ahead with the payment of bank guarantee smacks of collusion of the petitioner with the beneficiary to siphon off the funds belonging to the complainant. In fact, an interim order of injunction dated 03.06.2010 was issued by this court in O.A.No.672 of 2010 in C.S.No.570 of 2010. The payment of the guarantee was made on 29.05.2010 much before the issue of the interim orders from this court.

4. No doubt, the bank guarantee involves three parties namely the customer, the bank and the beneficiary. But the role of the bank is clearly defined and many a times, it is found that banks are unnecessarily drawn into controversies, if any

dispute arises between the customer and the beneficiary. The customer having given an irrevocable and unconditional undertaking to the bank to pay the beneficiary, in case the beneficiary decided to invoke the guarantee within the date of expiry.

5. Mr.Swaminathan, learned counsel appearing for the 2nd respondent/de-facto complainant would contend that a letter dated 11.02.2010 was issued to the bank by M/s Binayak Enterprises, cancelling bank guarantee and the same was received by the bank, as is seen by the endorsement made beneath the letter dated 11.02.2010. In the letter dated 11.02.2010, purportedly issued by the beneficiary M/s Binayak Enterprises does not mention, who the signatory is and whether he is authorized to issue such a letter on behalf of Binayak Enterprises. The said letter also bears the endorsement stating "received copy" which also contains a signature and a date. It has no seal of the bank. However, the letter dated 14.02.2010 by the customer M/s Penguin International Limited appears to be more authentic. Notwithstanding these facts, the reply dated 25.05.2010 by the bank to the legal notice dated 11.05.2010 has clearly spelt out the facts of the case and also suggests the legal recourse for the customer, which the petitioner is not bound to do. Based on a letter of invocation dated 21.05.2010 from the beneficiary, which was duly intimated to the customer, the full payment of the bank guarantee on 29.05.2010 is very much in order and cannot be faulted with. The allegation by the complainant that the petitioner colluded with the beneficiary, does not have any substance, because, the petitioner ought to have made the guaranteed amount to the beneficiary, on the date of the receipt of the intimation of invocation of the bank guarantee by the beneficiary. Generally, in such cases, bank is found fault and accused of favouring the customer by delaying the process of payment of guaranteed amount. In the instant case, a reference to the customer was also made by the petitioner to the customer before making any payment vide letter dated 29.05.2010 i.e. 8 days after the receipt of the letter of invocation from the beneficiary. Therefore, I do not find any malafide intention at the part of the present petitioner (2nd accused). Further more, the Apex court has spelled out that judicial intervention in bank guarantee is necessary only when a fraud or irretrievable harm or injustice is done. That is because, any bank guarantee placed a significant role in business sector. The Apex Court in Utterpradesh State Sugar Corporation Vs. Sumec International Limited reported in 1996 SCC 568 has held that whenever an irrevocable and unconditional bank guarantee to be paid without demur is invoked, the bank is bound to honour the guarantee irrespective of any dispute raised by the customers with notable exceptions like fraud, irretrievable justice. In the instant case, there is no such

instance of fraud or irretrievable justice and the as already observed, the bank was right in honouring the bank guarantee. The present petitioner had adhered to the rules and regulations of the bank and therefore, I hold that the proceedings in C.C.No.3255 of 2011 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai is liable to be quashed, as far as the present petitioner is concerned.

6. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.3255 of 2011 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai is quashed, with regard to the present petitioner alone. The learned XI Metropolitan Magistrate, Saidapet, Chennai is directed to proceed further as against the first accused in C.C.No.3255 of 2011. The connected criminal miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mst

To

1. The XI Metropolitan Magistrate,
Saidapet, Chennai.

2.-Do- Thro' The Chief Metropolitan Magistrate,
Egmore, Chennai.

3. The Sub Inspector of Police,
Central Crime Branch EDF Wing,
Office of the Commissioner of Police,
Egmore, Chennai-8.

4. The Public Prosecutor,
Madras High Court.

+1cc to M/S.King & Partridge, Advocate Sr.45215
+2cc to M/S.Swaminathan Law Associates, Advocate Sr.45211

Cr.O.P.No.25756 of 2012

spd[co]
srg 23/07/2018