

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.08.2018

DELIVERED ON: 11.08.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Cr1.O.P.No.15562 of 2013

and

M.P.No.1 of 2013

1. M/s Diacarb Tools Private Limited  
represented by Director P.R.Krishnan,  
having its registered office at No.1/449,  
Natco Colony, Kottivakkam, Chennai 600 041.
2. P.R.Krishnan, Director,  
M/s Diacarb Tools Private Limited  
having its registered office at No.1/449,  
Natco Colony, Kottivakkam, Chennai 600 041.

... Petitioners/Accused

Vs.

M/s SEW Eurodrive India Private Ltd.,  
Represented by authorized signatory  
Shivakumar,  
having office at No.5, Josmans Complex,  
McNichols Road, Chetpet,  
Chennai 600 031.

... Respondent/Complainant

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.106 of 2012 previously on the file of the Honourable XIV Metropolitan Magistrate Court, now on the file of the Fast Track Court No.II, Egmore, Chennai and quash the same.

For Petitioners : Mr.N.Umasankar

For Respondent : Mr.Rajkishore Bhagwatsaran

ORDER

The petitioners are accused in C.C.No.106 of 2012 on the file of the Fast Track Court No.II, Egmore, Chennai

2. The respondent/complainant M/s SEW Eurodrive India

Private Ltd. filed a private complaint under Section 200 of the Code of Criminal Procedure against the petitioners herein for the alleged offences punishable under Sections 138 and 141 of the Negotiable Instruments Act before the XIV Metropolitan Magistrate, Egmore, Chennai and it was subsequently transferred to the Fast Track Court No.II, Egmore, Chennai.

3. The brief case of the respondent/complainant is that the respondent company entered into a dealership agreement with the first petitioner company, represented by its Director, the 2nd petitioner on 17.06.2008 and in the course of business transaction between the respondent/ complainant company and the first petitioner company, there was an outstanding balance of Rs.70,97,316.51p due and payable by the first petitioner company, for which the first petitioner company, represented by the 2nd petitioner, issued 16 cheques for a sum of Rs.50,17,892.63. According to the complainant, when the cheques were presented for encashment through their bankers viz. HDFC Bank, Anna Salai branch on 25.03.2009, all the cheques were returned for the reason " Exceeds Arrangement " on the same date. When the Regional Manager (Sales) of the respondent/complainant company met the 2nd petitioner at his residence on 27.03.2009, he requested the respondent/complainant company to present the cheques on 22.07.2009, However, all the cheques were dishonoured for the reasons " Exceeds Arrangement " and " out of date ". Thereafter, the respondent/complainant issued a legal notice dated 05.08.2009 to the petitioners herein and the said notices were returned unserved with an endorsement " left ". Since no amount was forthcoming, the respondent/complainant filed a private complaint in C.C.No.106 of 2012 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai against the petitioners for the alleged offences punishable under Sections 138 and 141 of the Negotiable Instruments Act which is now pending on the file of the Fast Track Court No.II, Egmore, Chennai.

4. On the side of the petitioners, the following grounds were raised.

1] Out of 16 cheques, 11 cheques were presented beyond the period of 6 months.

2] Mr.C.V.Shivakumar has no authority to represent the respondent M/s SEW Eurodrive India Private Ltd., since the respondent/complainant company had authorized only Mr.James, branch manager, Chennai branch to represent them.

3] The statutory notices have not been served on the petitioners and therefore, the respondent/ complainant cannot maintain a complaint under Section 138 of the Negotiable Instruments Act.

4] The respondent/complainant has not also averred in their complaint that the 2nd petitioner is in charge of the day to day affairs of the company and hence the complaint in C.C.No.106 of 2012 is liable to be dismissed.

5. Per contra, Mr.Rajkishore Bhagwatsaran, learned counsel appearing for the respondent/complainant would contend that though 11 cheques were presented beyond the period of 6 months, there are 5 more cheques, which were returned for the reason "Exceeds Arrangement" and therefore, there is no impediment for the learned Magistrate to proceed further with regard to those 5 cheques. He would further contend that the present complaint was filed in the year 2009 and it was returned for various reasons by the learned XIV Metropolitan Magistrate, Egmore, Chennai and at the time of filing of the complaint, Mr. C.V.Shivakumar was authorized to file the complaint and the Board Resolution, authorizing Mr.C.V.Shivakumar was also filed as document No.25 along with the complaint and therefore, the complaint filed by Mr.C.V.Shivakumar cannot be said to be without any authority.

6. His another contention is that the statutory notices were sent to the correct addresses of the petitioners herein and therefore, the contention of the petitioners that there is no proper service of notice cannot be accepted. It is his further submission that since the 2nd petitioner has signed the impugned cheques, there is no necessity for the complainant to specifically aver in the complaint that he was in charge of day to day affairs of the company.

7. A perusal of the records shows that out of 16 cheques, 11 cheques were presented beyond the period of 6 months. However, there are 5 more cheques, which were returned for the reason " Exceeds Arrangement". Therefore, the learned Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai can proceed further against the petitioners herein with regard to those 5 cheques. As rightly pointed out by the learned counsel for the respondent, since the 2nd petitioner has issued the cheques in favour of the respondent/complainant, there is no necessity to aver specifically in the complaint that the 2nd petitioner was in charge of day to day affairs of the company and therefore, he can be prosecuted for the alleged offence punishable under Section 138 of the Negotiable Instruments Act. As far as the contention of the learned counsel for the petitioners that no notices were issued to them, it is clear from the records that statutory notice was issued to both the petitioners to the addresses mentioned in the complaint and it is not the case of the petitioners that the addresses mentioned in the complaint were not their addresses. The Apex Court time and again has held in several decisions that if the payee has

dispatched notice to the correct address of the drawer, it can be recorded that he made demand by giving notice. In any event, the decision as to whether or not service of notice under Clause (3) of the proviso to Section 138 of the Negotiable Instruments Act should be deemed to be sufficient, can be taken only after the evidence is let in and not at the initial stage.

8. Another contention raised by the petitioners is Mr.C.V.Shivakumar has no authority to represent the respondent/complainant M/s SEW Eurodrive India Private Ltd. Mr.N.Umashankar, learned counsel appearing for the petitioners drew the attention of this court to the Board Resolution dated 02.09.2011 passed by the respondent/complainant, wherein, one Mr.S.James, Branch Manager - Sales and Marketing was authorized to represent the respondent/complainant and to proceed against M/s Diacarb Tools Private Limited, the first accused company and based on this resolution, the said Mr.S.James had also filed a proof affidavit before the concerned court. Per contra, the learned counsel for the respondent/complainant would contend that C.C.No.106 of 2012 was originally filed during the year 2009 before the learned XIV Metropolitan Magistrate, Egmore, Chennai and at that point of time, one Mr.C.V.Shivakumar was authorized to file the complaint and since he had quit the job, a Resolution was passed on 02.09.2011 authorizing Mr.S.James to represent the respondent company viz., M/s SEW Eurodrive India Private Ltd. In fact, along with the complaint, the authorization issued to Mr.C.V.Shivakumar is filed as document No.25 and in the facts and circumstances, it cannot be said that the complaint filed by the respondent/ complainant is not maintainable. Therefore, I do not find any reason to quash the proceedings in C.C.No.106 of 2012 on the file of the Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai and hence the petition is liable to be dismissed.

9. In the result, the criminal original petition is dismissed. Since the case in C.C.No.106 of 2012 on the file of the Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai is pending for more than 6 years, the Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai is directed to dispose of the case within a period of three months, from the date of receipt of a copy of this order.

10. With the above observations, the criminal original petition is dismissed and the connected miscellaneous petitions is closed.

Sd/-

Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

mst

To

1. The Metropolitan Magistrate,  
Fast Track Court No.II  
Egmore, Chennai.

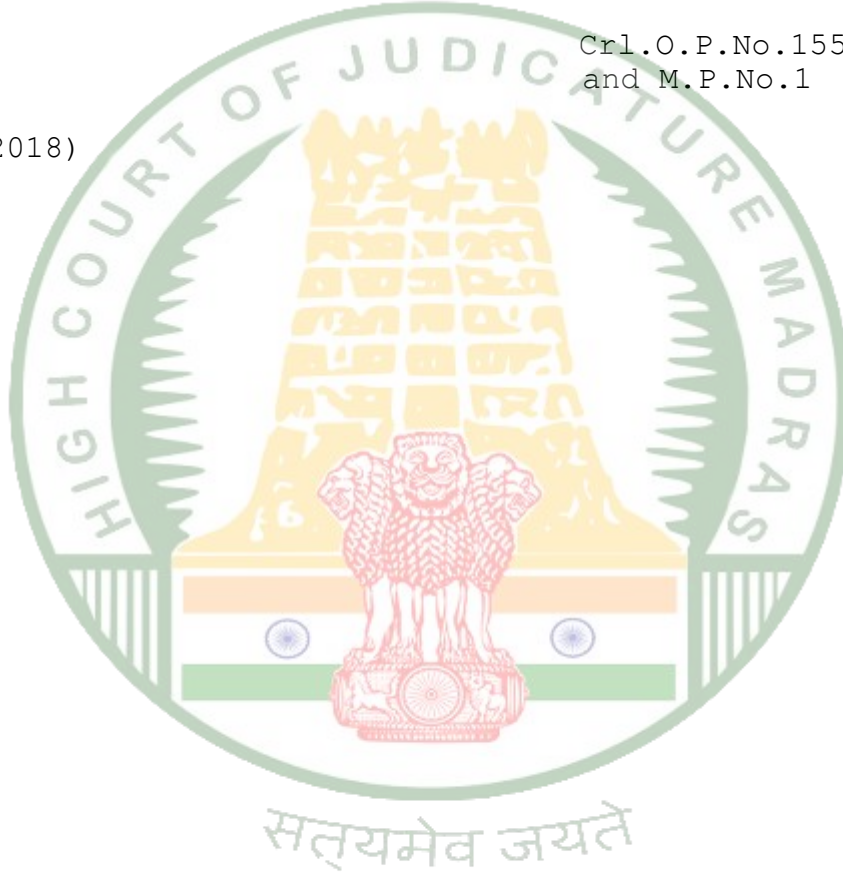
2. The Public Prosecutor,  
Madras High Court.

+lcc to Mr.N.Uma Sankar, Advocate SR.No.56279

+lcc to Mr.Rajkishore Bhagwatsaran, Advocate SR.No.55470

Crl.O.P.No.15562 of 2013  
and M.P.No.1 of 2013

PVS (CO)  
GN(29/08/2018)



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