

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2018

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.24746 of 2018

and

Crl.M.P.Nos.13968 & 13972 of 2018

1. M/s. Devaki Steels & Cements,
represented by its Authorised Signatory,
T.Gopu [as per complaint]
No.2/82, Sri Ram Complex,
Pondy - Tindivanam Main Road,
Thiruchitrambalam Koot Road,
Puduchery.
And also at:
23/234, Jawahar Nagar Main Road,
Bomianpet, Puducherry.
2. T.Gopu
Authorised Signatory,
M/s.Devaki Steels & Cements,
No.54, 3rd Cross Street,
Jawahar Nagar, Bomianpet,
Puducherry - 605 005 [as per complaint] .. Petitioners

Vs

M/s Kotak Mahindra Bank Ltd.
No.39, Ceebros Centre, 2nd Floor,
Montieth Road, Egmore,
Chennai - 600 008.
Rep. by its Chief Manager,
Ragothaman .. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C.
to call for the records in C.C. No.3740 of 2017 on the file of
Court of Fast Track-IV, George Town, Chennai and to quash the
same.

For Petitioners : Mr.P.V.Ramachandran

O R D E R

This Criminal Original Petition has been filed to call for
the records in C.C. No.3740 of 2017 on the file of the Fast

Track Court No.IV, George Town, Chennai and to quash the same.

2.For the sake of convenience, the parties will be referred to as accused and complainant.

3.It is the case of the complainant that the accused had availed financial facilities aggregating to Rs.21.08 crores (Rupees Twenty One Crores and Eight Lakhs only) for the five concerns run by the accused; towards the liability, the accused had issued the impugned cheque dated 30.08.2017 for Rs.2,00,00,000/- (Rupees Two Crores only), drawn on Kotak Mahindra Bank, Puducherry Branch; when the cheque was presented by the complainant, it was returned dishonored on 11.09.2017 with the remarks "Funds Insufficient as well as other reasons - Dormant". Thereafter, the complainant had issued a statutory notice dated 21.09.2017 to the accused. Since, the accused neither replied to the notice nor repaid the amount, the complainant has initiated proceedings in C.C. No.3740 of 2017 under Section 138 of the Negotiable Instruments Act and the same is pending on the file of the Fast Track Court No.IV, George Town, Chennai, for quashing which, the accused are before this Court.

4.Heard the learned counsel for the accused, who submitted that the accused had given a signed, but blank cheque, as security to the complainant, which the complainant had filled and had presented it in their own Bank and have managed to have it dishonored for the purpose of filing the present prosecution. He further contended that the return memo shows that the cheque was dishonored, not only for insufficiency of funds, but also on the ground that the account is dormant.

5.The learned counsel for the accused contended that the complainant knew that the account is dormant. But, they have deliberately presented the cheque for clearance, in their own Bank.

6.This Court gave its anxious consideration to the submissions of the learned counsel for the accused.

7.On a reading of the complaint, it is alleged by the complainant that the accused had availed financial facilities to a tune of Rs.21.08 Crores (Rupees Twenty One Crores and Eight Lakhs only) vide sanction letters dated 17.06.2011 and 03.09.2012. The complainant has also disclosed the loans obtained by various companies, run by the accused. Admittedly, the cheque has been signed by the accused.

8.However, it is the contention of the accused that the complainant had filled up all the other details in the cheque and had deliberately presented the cheque in their own bank.

9. In the opinion of this Court, that cannot be a good reason for this Court to infer mala fide. The complainant is an financial institution and it is also involved in banking business. The accused has given the cheque drawn on the account maintained in the Puducherry Branch of the complainant Bank. Whether the complainant themselves had filled the cheque or not, is a disputed question of fact, which cannot be gone into, in a petition under Section 482 Cr.P.C. in the light of the law laid down by the Supreme Court in the case of S.Krishnamoorthy v. Chellammal [2015 (4) Scale 371].

Hence, this Criminal Original petition is dismissed, with liberty to the petitioner to raise all the points before the trial Court, after the charges are framed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mkn/ssr

To

1. The Fast Track Judge,
Fast Track Court No.IV,
George Town,
Chennai.

2. The Public Prosecutor,
High Court, Madras.

RJ(CO)
CSL/12.11.2018

सत्यमेव जयते

Cr1.O.P.No. 24746 of 2018

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