IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.24740 of 2018
and CRL.M.P.Nos.13961 and 13963 of 2018

1.M/s.Surana Power Limited,
Rep. By its Managing Director,
Chokkani Towers, No.29, Whites Road,
2nd Floor, Royapettah,
Chennai 600 014.

2.Dinesh Chand Surana
3.G.R.Surana .. Petitioners

Vs

UCO Bank,
Rep. By its Assistant General Manager,
Flagship Corporate Branch, PLA Rathina Towers,
Mount Road, Chennai 600 006. .. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to C.C.No.3645 of 2015 on the file of the XIV Metropolitan Magistrate, Egmore at Allikulam, Chennai 600 003 and quash the same.

For Petitioners: Mr.S.J.Jagadev,
for Mr.P.V.Preeja

For Respondent :Ms.M.Prabhavathi,
Additional Public Prosecutor

O R D E R

This Criminal Revision Petition has been filed to call for the records relating to C.C.No.3645 of 2015 on the file of the XIV Metropolitan Magistrate, Egmore at Allikulam, Chennai 600 003 and quash the same.

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

3.It is the case of the complainant-bank that the first accused was granted credit facility on 26.12.2014 and a letter of credit for 90 days was issued in favour of the accused to clear the consignment of coal, in which business the accused were into. In the terms of the letter of credit, the accused was required to pay a total sum of Rs.5,03,21,250/- only, which the accused did not pay within 90 days. Towards the said due, the accused gave a cheque for Rs.5,03,21,250/- dated 26.03.2015. The complainant-bank presented the cheque and the same was dishonoured for insufficiency of funds on 18.06.2015. Thereafter, the complainant issued a statutory notice dated 23.06.2015 to all the accused, intimating them about the dishonour of the cheque. Since the accused did not make the payment, the complainant-bank has initiated the prosecution in C.C.No.3645 of 2015 before the XIV Metropolitan Magistrate, Egmore, Chennai under Section 138 of the Negotiable Instruments Act against the five accused, for quashing which A1, A2 and A4 are before this Court.

4.Heard Mr.S.J.Jagadev, learned counsel for the accused who submitted that the impugned cheque were given only as a security and not towards the discharge of the liability, as contended by the complainant-bank. He further submitted that towards the loan amount, the accused has paid around Rs.54,00,000/-, that being the margin money and therefore, the cheque for Rs.5,03,21,250/- does not represent the correct debt amount. He placed strong reliance upon the terms of the contract and submitted that the accused had also given property security to the tune of Rs.225.52 crores to the complaint-bank at the time of availing the credit facility.

5.Mr.S.J.Jagadev placed strong reliance on the unreported judgment of this Court in Angu Parameswari Textiles (P) Ltd., and others Vs. Sri Rajam and Company, 2001 - Vol.105 Company Cases-105, wherein the learned Single Judge of this Court has held that if the cheque amount exceeds the debt amount, a prosecution under Section 138 cannot be maintained. He further contended that this reliance has been relied upon by the Bombay High Court in Karekar Finance Pvt. Ltd., an.. Vs. Shri M.N.Bashyam & another 2007 ALL MR (Cri) 3073.

6.This Court gave its anxious consideration to the submissions.

7.As regards the first contention that the cheque was issued only as a security, this Court is of the view that the same is a disputed question of fact and cannot be decided in a quash application. Similarly, whether the cheque amount exceeds the debt amount is also a disputed question of fact and can be decided only during trial. In Angu Parameswari Textiles case (cited supra), this Court has specifically noted as follows:

"3.The original cheque amount is for Rs.4,68,581/-. Subsequently, the complainant has admitted that he received a demand draft of Rs.2,00,000/- towards part payment of the cheque amount. Therefore, as on May 2, 2000, the amount due to the complainant is only Rs.2,68,581/-....."

8.A reading of the above paragraph shows that, in that case, the complainant had admitted that the accused had given a Demand Draft for Rs.2,00,000/- and in those circumstances, this Court held that the cheque amount exceeds the debt amount.

9.Mr.S.J.Jagadev placed reliance upon the bank statement to show that the cheque amount exceeded the debt amount. In the opinion of this Court, the bank statement cannot be relied upon to quash the prosecution and it has to be proved in the manner known to law during trial while examining the witnesses produced by the complainant-bank. It is for the complainant-bank to establish the ingredients of the offences under Section 138 of the Negotiable Instruments Act and only thereafter the burden under Section 139 of the Negotiable Instruments Act will fall upon the accused. In this case, there is no admission by the complainant-bank that the cheque amount exceeds the debt amount. In S.Krishnamurthy Vs Chellammal [2015] 4 SCALE 371, the Hon'ble Supreme Court has very clearly held that while dealing with an application in Criminal Procedure Code, disputed questions of fact cannot be gone into. Hence, this petition is closed with liberty to the petitioner to raise all the points before the Trial Court.

10.Mr.S.J.Jagadev contended that G.R.Surana (A3/3rd petitioner) had resigned from the 1st accused company on 29.04.2015, but however, on a perusal of Form DIR-12, it is seen that the same has been filed before the ROC only on 08.04.2016. The impugned cheque in this case is dated 28.03.2015. Therefore, the prosecution cannot be quashed as against G.R.Surana, A3 at the threshold. In the result, this petition is closed with liberty to the petitioners to raise all the points before the Trial Court during the course of trial. Whatever is stated here is only for deciding this quash application and grounds are still open to the accused to be urged before the Trial Court.

11.Mr.S.J.Jagadev submitted that the Court may dispense with the presence of G.R.Surana (the 3rd petitioner) before the Trial Court.

12.Accepting the submission, G.R.Surana/3rd petitioner is directed to appear before the Trial Court within a period of two weeks from the date of receipt of a copy of this order and file an application under Section 436 Cr.P.C for bail. She shall be released on bail in all the cases on the same day, on she executing a bond for a sum of Rs.10,000/- with two sureties (common sureties). Thereafter, the 3rd petitioner shall appear for the hearings under Sections 251, 313 Cr.P.C and on the date of judgment. For other hearings, if the third petitioner files an application under Section 317 of Cr.P.C., undertaking that she will not dispute her identity and that her counsel will cross-examine the prosecution witnesses on the day they are examined in-chief, without adopting any dilatory tactics, her presence can be dispensed with. If the accused adopts any dilatory tactics, the Trial Court shall insist upon the presence of the accused. If the accused absconds, a fresh FIR can be registered against them under Section 229-A of IPC.

In the light of the above, this petition is closed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The XIV Metropolitan Magistrate,
Egmore at Allikulam,
Chennai 600 003.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.V.Preeja, Advocate, S.R.No. 72349

CRL.O.P.No.24740 of 2018
and CRL.M.P.Nos.13961 and 13963 of 2018

VSNII(CO)
GN(12/11/2018)