IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2019

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.24869 of 2013
and
M.P.No.1 of 2013

Anand Ramalingam ..Petitioner/Accused No.2

Vs.

M/s. CANBANK FACTORS LTD.,
United Indian Building,
Second Floor, Western Wing,
1028, Avanashi Road,
Coimbatore - 641 018.
Represented by its Senior Vice President
and Branch in-charge Mr.R.Sadasivam,
Son of Rangan aged 58 years. ..Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the entire records pertaining to proceedings in C.C.No.119 of 2012 pending on the file of the Judicial Magistrate Fast Track Level-1, Coimbatore and quash the same.

For Petitioner : Mr.S.T.Raja for
M/s.OM Sai Ram Associate

For Respondent : No appearance

O R D E R

The petitioner is the accused No.2 in C.C.No.119 of 2012 pending on the file of the Judicial Magistrate/Fast Track Court No.I, Coimbatore has filed this quash petition.

2.The respondent a Public Limited Company, a subsidiary of Canara Bank filed a private complaint under Sections 138, 141 and 142 of the Negotiable Instruments Act against the petitioner and seven others.

3.The brief fact of the case is that the first accused is the company viz., M/s. Ramalinga Fabrics Pvt. Ltd., registered under the Companies Act and the petitioner is the Director of the first accused company.

4.The first accused company approached the respondent by submitting an application form dated 21.01.2011, seeking factoring facilities comprising of debt purchase limit of Rs.500 lakhs and pre-payment limit of Rs.400 lakhs. The sale bill factoring limits were sanctioned by the respondent to accused No.1 as per the sanction order dated 10.06.2011. The Board of Directors of the first accused company passed a Board Resolution, which was held on 15.06.2011, for availing the said bill factoring limit. The first accused company including the petitioner executed factoring cum pre-payment agreement dated 16.06.2011 in favour of the respondent. Further, the first accused company executed a power of attorney dated 16.06.2011, favouring the respondent favouring discounting of bills from the customers directly. Accused Nos.2 to 5 executed letter of guarantee dated 16.06.2011 in favour of the respondent. On the execution of these documents and on undertaking of the accused the facilities were availed by the petitioner, which is shown as Item No.I to III in the complaint.

5.As per Item No.I, the amount of Rs.1,51,05,257/- has been paid to the invoices dating from 20.12.2011 to 15.03.2012; as per Item No.II, the amount of Rs.1,39,10,058/- has been given for the invoices dating from 09.12.2011 to 15.03.2012; and for Item No.III, the amount of Rs.1,85,86,824/- has been granted for the invoices from 12.12.2011 to 14.03.2012. In order to discharge these outstanding amounts as detailed, the accused had issued three cheques and the details of the cheques are as follows:

SI.No.	Cheque No.	Dated	Amount	Drawn on
1	423663	04.06.2012	Rs.1,51,05,257/-	Tamilnad Mercantile Bank Ltd., No.260, Easwaran Koil Street, Erode.
2	423664	04.06.2012	Rs.1,39,10,058/-	Tamilnad Mercantile Bank Ltd., No.260, Easwaran Koil Street, Erode.
3	423665	04.06.2012	Rs.1,85,86,824/-	Tamilnad Mercantile Bank Ltd., No.260, Easwaran Koil Street, Erode.

6.The above said cheques were presented for collection and the same were returned un-paid by the accused banker viz., Tamilnad Mercantile Bank Ltd., on 01.09.2012 for the reason “Funds In-sufficient”. Thereafter, statutory notice dated 24.09.2012 was issued to the petitioner/accused and he received the notice on 28.09.2012 and had sent a reply on 07.10.2012. Not satisfied with the reply, the respondent had filed a complaint before the trial Court, in which the petitioner was arrayed as accused No.2.

7.The contention of the petitioner is mainly on the ground that the petitioner had resigned from the company on 06.06.2012, which was much before the date of dishonour of the cheques. Further, the cheques have not been signed by the petitioner/accused No.2 and it was actually signed by the third accused and hence, he is not liable for the debt.

8.The learned counsel for the petitioner further submitted that the petitioner/accused No.2 was not the drawer of the cheques and he was not involved in the day-to-day affairs of the first accused company and there is no specific averments against the petitioner/accused No.2 in order to attract Section 141 of the Negotiable Instruments Act.

9.In support of his contention, the learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in the case Pooja Ravinder Devidasani /Vs./ State of Maharashtra and Another reported in (2014) 16 Supreme Court Cases 1. The facts and the principle of the case is not applicable to the present case.

10.Considering the submissions made by the learned counsel for the petitioner and on perusal of the materials placed, it is seen from the complaint that the loan facility for the accused company was granted on 10.06.2011 and all the accused including the petitioner/accused No.2 had executed pre-payment agreement, letter of guarantee and power of attorney in favour of the respondent to realise the amount for the invoices enlisted in the complaint for the period from December 2011 to March 2012. In discharge of the said liability cheques bearing Nos.423663, 423664 and 423665 respectively were issued and the above said cheques were all dated 04.06.2012, the resignation of the petitioner/accused No.2 was only on 06.06.2012. Hence, the entire transaction and the liability arose much before the resignation of the petitioner from the first accused company. The petitioner does not deny the liability of the first accused company to the respondent. The petitioner/accused No.2 was not the Director of the first accused company when the cheques got dishonoured, cannot be countenanced.

11.Further, it is seen that the accused have sent their reply and taken a defence that they were not liable for the debt, since most of them resigned from the first accused company, which was nothing but a ploy to evade from the payment to the respondent. It is to be noted that the third accused, who was the signatory to the cheque had sent a reply in similar wording as that of the petitioner/accused No.2 and the other accused.

12.On perusal of the complaint, it is seen that there were enough materials and averments made in the complaint to show the petitioner's role in the first accused company and hence, the petitioner's contention that he had resigned from the company on 06.06.2012 is not sustainable. It is also seen that 27 documents have been listed in the complaint, which would go to show that those documents have to be tested during the trial and not in the quash petition.

13.Hence, this Criminal Original Petition stands dismissed. The trial Court is directed to dispose of the case in C.C.No.119 of 2012 as expeditiously as possible, within a period of three months from the date of receipt of a copy of this order, since the case is of the year 2012. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate Fast Track Level-1,
Coimbatore.

2.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.Om Sai Ram, Advocate Sr.No.47922

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CSL/15.07.2019