

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.09.2018

Pronounced on : 24.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.9601 of 2010

and

M.P.No.1 of 2010

1.Mrs.JayaRani,
W/o.R.John Sundara Pandian.

2.Mrs.Sheela Suresh,
W/o.Suresh. ... Petitioners/Accused Nos.3 & 4

/Vs./

1.Mrs.M.Leema Rose,
W/o.S.Martin,
Rep. by her Power Agent,
R.Paramasivam,
S/o.Ramalingam. ... Respondent/Complainant

2.M/s.Sheela Rani Textiles,
Rep. by its Managing Director,
Mr.R.John Sundara Pandian.

3.R.John sundara Pandian,
Managing Director,
M/s. Sheela Rani Textiles. ... Respondents/Accused
Nos.1&2

PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to C.C.No.139 of 2009 on the file of the Judicial Magistrate Court No.II, Coimbatore and quash the same as far as the petitioners alone and pass such other order as this Court may deem fit in the nature and circumstances of the case.

For Petitioners : Ms.S.T.P.Kuilmozhi for
Mr.Veerakathiravan

For R1 : Mr.S.Saravanan

For R2 & R3 : Given up

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O R D E R

This Criminal Original Petition is filed to call for the records pertaining to C.C.No.139 of 2009 on the file of the Judicial Magistrate No.II, Coimbatore and quash the same as far as the petitioners alone.

2.The petitioners are accused Nos.3 and 4 in a private complaint filed by the first respondent/Complainant for the offence under Section 138 of the Negotiable Instruments Act in C.C.No.139 of 2009, which is pending trial on the file of the Judicial Magistrate Court No.II, Coimbatore.

3.For the sake of convenience the petitioners herein are referred to as "Accused Nos.3 and 4" and the first respondent as "Complainant" and the second and third respondents as "Accused Nos.1 & 2".

4.The gist of the complaint is that the first accused company represented by its Managing Director Accused No.2 and Accused Nos.3 and 4 are its Directors.

5.The accused are running a Textile unit in the name and style of M/s. Sheela Rani Textiles Limited. The accused approached the complainant for financial assistance and further submitted that A3 and complainant would start a partnership business in the name of M/s. Best Agencies in the year 2001, wherein, the complainant and the accused No.3 were its partners. As per the terms of Memorandum of Understanding, the complainant would be the Managing partner of M/s. Best Agencies, who would be the financial partner of that concern to invest for the business. As such the Accused Nos.2 and 3 have requested the complainant to make a financial assistance for doing the textile business.

6.In continuation of the same, the complainant had paid the accused by way of Demand Drafts for Rs.3,00,00,000/- [Rupees three crore only] and the details are as follows:

SI. No.	D.D. Nos.	Dated	Amount	In favour of
1	056174	17.04.2001	Rs.1,00,00,000/-	M/s.Sheela Rani Textiles
2	056949	07.05.2001	Rs.1,00,00,000/-	M/s.Sheela Rani Textiles
3	057460	21.05.2001	Rs.1,00,00,000/-	M/s.Sheela Rani Textiles

7.The accused on receiving the Demand Drafts for business ought to have utilised the same for the business to be dealt by M/s. Best Agencies and out of the profit, the interest would be repaid. Instead of that the accused have utilized the above loan amount for themselves and paid the monthly interest upto December, 2004, thereafter, they stopped making any payment.

8.In discharge of the above said liability, the accused had issued the Cheque No.911259 dated 06.12.2005 drawn on M/s. Bank of Baroda, Madurai Main Branch, Madurai - 625 001 in favour of the complainant. Believing the words of the accused the complainant presented the said cheque for encashment on the same day through its banker viz., M/s. Citi Bank Limited, Coimbatore. On 15.12.2005, the said cheque was returned by the bankers of the accused for the reason "INSUFFICIENT FUNDS" and the same was intimated by the complainant's banker on 21.12.2005. Thereafter, legal notice dated 30.12.2005 was sent to the accused. Though, the accused had received the same, a reply was sent by A3 i.e., the first petitioner wherein she had stated that she is the account holder of the cheque, but the above said cheque has been issued by A2 on behalf of A1, which would amount to cheating, since, the cheque was returned for the reasons "INSUFFICIENT FUNDS". The above case came to be filed against the accused.

9.The contention of the learned counsel appearing for the petitioner is that the first petitioner/Accused No.3 admits that the cheque in question is a personal cheque misused by Accused No.2 and Accused No.2 is not having any authority to issue the cheque. Further, Accused No.3 is a house wife and not taken part in the day-to-day affairs of the company.

10.Accused No.4 is the daughter of Accused Nos.2 and 3 and she had got married in the year 2001, after the marriage she had settled down in Chennai and she had no role in the loan transaction between the complainant and the accused. Further, she is not looking after the day-to-day affairs of the company and there is no averment as against Accused No.4, except for bald averment that these petitioners i.e. Accused Nos.3 and 4 are the Directors of A1 company. Stating the same they also sent their respective replies to the complainant.

11.The learned counsel for the first respondent/complainant submits that all the accused have approached the complainant seeking financial assistance from the company. Though, the loan amount have been received for the partnership concern viz., M/s. Best Agencies but no business would take place, instead of that the accused have utilized the funds for their use. Initially, some interest was paid, thereafter, they neither paid

the interest nor re-paid the principle. When the same was questioned by the complainant in discharge of the said liability, the accused had issued the above said cheque, which got dishonoured, hence, the case was filed.

12. On perusal of the materials, this Court finds that the cheque has been issued with a stamp for M/s. Sheela Rani Textiles and the accused No.2 had signed the cheque. Now, accused No.3 being the wife of accused No.2 makes a claim that the cheque in question is her personal cheque, which had been issued by accused No.2 and signed by Accused No.2 without the authority of accused No.3. It is pertinent to the note that accused No.2 and 3 are husband and wife. It is also found that the cheque has been returned for the reason "INSUFFICIENT FUNDS", hence, the case has been filed under Section 138 of the Negotiable Instruments Act.

13. In view of the dubious stand taken by the accused No.3 and it is an admitted fact that the accused had received three Demand Drafts for Rs.3,00,00,000/- [Rupees three crore only] from the complainant, this Court finds that the factual aspect is to be gone during the trial. As regards A4, who is the daughter of A2 and A3 got married in the year 2001 and she has been residing at Mogappair, Chennai and admittedly, she is not the signatory to the cheque and there is no specific averments that the cheque was issued with her knowledge and she had taken part in the day-to-day affairs of the first accused company.

14. Considering the same, this Court quashes the proceedings as against the second petitioner/Accused No.4 viz., Mrs. Sheela Suresh alone. With regard to the first petitioner/Accused No.3 viz., Mrs. Jaya Rani the Criminal Original Petitions stands dismissed.

15. Accordingly, this Criminal Original Petition stands partly allowed, since the case is pending trial from the year 2009 and the trial Court is directed to complete the trial on a day-to-day basis by giving top priority to this case, within a period of three months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition stands closed.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.II,
Coimbatore.

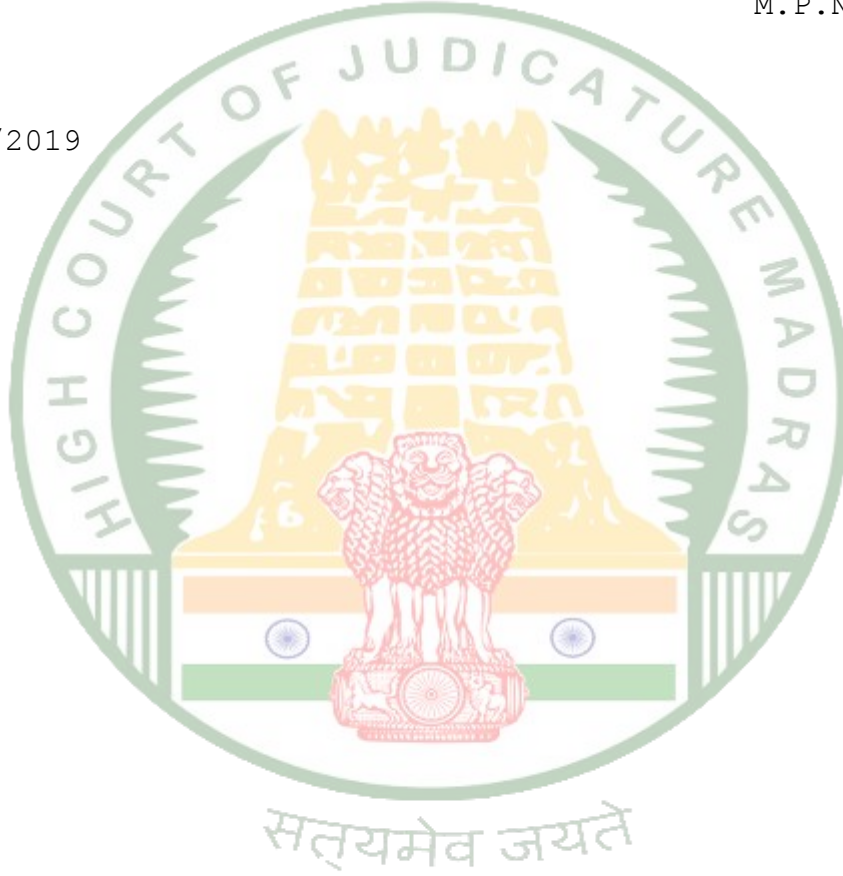
2.-do- Thro' Chief Judicial Magistrate,
Coimbatore.

+lcc to Mr.S.T.P.Kuilmozhi, Advocate, S.R.No.5699

CrI.O.P.No.9601 of 2010
and
M.P.No.1 of 2010

GJII(CO)

rrs 18/02/2019



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