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.9602 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.M/s.D.P.F. Textiles Pvt. Ltd.,
Rep. by its Director S.Martin,
Rep. by his 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.140 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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ORDER

This Criminal Original Petition is filed to call for the records pertaining to C.C.No.140 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 and 141 of the Negotiable Instruments Act read with Section 420 of the Indian Penal Code in C.C.No.140 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 case of the complainant 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 first accused company is dealing in Textile business and the accused No.2 on behalf of accused No.1, 3 and 4 had approached the complainant in the year 2001 stating that they have undertaken M/s. Sivakami Mills Limited of Madurai as a subsidiary unit for conversion of cotton and for this purpose accused No.2 had dealt with cotton traders in Andhra Pradesh and for the said business he needs financial assistance from the complainant and the accused No.2 would look after the procurement of cotton by raising invoices in the name of the complainant and in turn unload the cotton purchased from Andhra Pradesh at his Madurai Textile Unit, assuring the complainant concern to repay the value of the cotton procured with marginal profit.

6.Further, accused No.2 during the month of March 2001 had procured cotton from M/s. Sri Mugambikai Cotton Agencies, Gundur, Andhra Pradesh on various dates from 15.03.2001 to 28.03.2001 to the tune of Rs.79,28,200/- vide invoices and had informed that the same was directly unloaded at his Madurai Textile Unit and as such the complainant concern has raised its invoice on 29.03.2004 in the name of the accused concern with the marginal profit of nearly 5.5% which comes to the value of rs.83,83,440/-.

7.As per the above statement of the accused the complainant had issued a Demand Draft in favour of the first accused concern for the value of cotton and the above Demand Draft was drawn on I.C.I.C.I Bank, Coimbatore dated 01.03.2001, 02.03.2001 and

20.04.2001 and D.D.Nos.76881, 768934 respectively - Rs.26,00,000/-, Rs.50,00,000/- and Rs.3,28,200/-. After this transaction the accused had avoided contact with the complainant. By making search of the business dealings of the accused the complainant came to know that there was no such company in the name of M/s. Mugambikai Cotton Agencies at Gundur, Andhra Pradesh.

8.The accused have also deceived the complainant by receiving Demand Drafts as above for the value of Rs.79,28,200/- favouring the first accused company. The accused finally after negotiations came forward to issue a cheque bearing No.911257 dated 06.12.2005 for a sum of Rs.83,83,440/- [Rupees eighty three lakh eighty three thousand four hundred and forty only] drawn on Bank of Baroda, Madurai Main Branch 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. Karur Vysya Bank Limited, Dr.Nanjappa Road, Coimbatore - 12. On 09.12.2005, 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 10.12.2005. Thereafter, legal notice dated 23.12.2005 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 signed and 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 concern viz., M/s. Sri

Mugambikai Cotton Agencies, but no business would take place, instead of that the accused have utilized the funds for their use. The accused neither paid the interest nor 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 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 and it is an admitted fact that the accused had received the Demand Draft from the complainant, this Court finds that the factual aspect is to be borne during the trial. As regards A4, who is the daughter of A2 and A3 had 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.

Crl.O.P.No.9602 of 2010
and
M.P.No.1 of 2010

GJII(CO)

rrs 18/02/2019