IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.03.2019
Pronounced on : 30.04.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.6119 & 6120 of 2013
and
Crl.M.P.Nos.1, 1, 2, 2, 3, 3, 4, 4, 3448 & 3450 of 2019

1.M/s. Deccan Chronicle Holdings Ltd.,
Represented by its Authorised Representative
Mr.R.Guru Prasad,
No.36, Sarojini Devi Road,
Secunderabad - 560 003.

Also having office at:
Paragon Center, H Wing, 2nd Floor,
Opposite Century Mills,
Pandurang Budhkar Marg
Worli, Mumbai - 400 013.

2.T.V.Venkattram Reddy,
Executive Chairman,
No.36, Sarojini Devi Road,
Secunderabad - 560 003.

3.P.K.Iyer,
Vice Chairman,
No.36, Sarojini Devi Road,
Secunderabad - 560 003.

4.T.Vinayak Ravi Reddy,
Vice Chairman,
No.36, Sarojini Devi Road,
Secunderabad - 560 003. ... Petitioners/Accused Nos.1 to 4
(in both Crl.O.P.Nos.)

Vs.

M/s. Royal Sundaram Alliance
Insurance Company Limited,
Represented by Mr.Ramu Govindan,
No.21, Patullos Road,
Chennai - 600 002. ... Respondent/Complainant
(in both Crl.O.P.Nos.)

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.Nos.3224 and 3323 of 2012 respectively pending on the file of the VII Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioner : Mr.K.Rajasekar (in both Crl.O.P.Nos.)

For Respondent : Mr.T.K.Bhaskar (in both Crl.O.P.Nos.)

C O M M O N O R D E R

The petitioners herein are the accused in C.C.No.3323 of 2012 and C.C.No.3324 of 2012 pending on the file of VII Metropolitan Magistrate, George Town, Chennai on a complaint given by the respondent/complainant for the offence under Section 138 read with 141 of the Negotiable Instruments Act. Since the points involved in both the petitions are common, both the cases are disposed of by a common order. For the sake of convenience, the petitioners are referred as accused and the respondent as Complainant as per the complaint.

2.The brief facts of the case is that the complainant is a Public company incorporated under the companies act which is engaged in the business of providing general and specialized insurance solutions to individuals, families and business entities. The 1st accused Deccan Chronicle holdings Ltd., is represented by the 2nd accused, the accused Nos.2, 3 and 4 are Promoters of the 1st accused company, who hold 63.37 % of the paid up equity capital of the 1st accused company and the 2nd accused is the Chairman, and the 3rd accused is the Vice Chairman incharge of operational matters such as strategic planning and finance, the 4th accused Vice chairman responsible for supervision, planning and procurement of capital goods, printing, circulation and advertisement operations of the 1st accused company. The accused Nos.2 and 3 have attended the meeting with the complainant and cheques which are dishonoured were handed over to the complainant. The accused Nos.3 and 4 are the authorized signatories of the cheques and they are responsible for the day to day affairs, administration and conduct of the 1st accused company.

3.The complainant had purchased 100 unsecured non convertible debentures of face value of Rs.10 lakhs each aggregating to Rs.10 Crores on 05.07.2011 and were repayable on

26-6-2012 with accrued interest @ 11.25% p.a. On the due date, A.4 vide letter dated 26.06.2012 expressed that the accused company was not in a position to redeem the debentures on the due date and requested for extension for one month and further assured to make the payment due of principal with interest. Hence, the amount of Rs.11,12,19,178 (Rupees Eleven Crores Twelve lakhs nineteen thousand one hundred and seventy eight only) became due and payable towards, principal and interest on the redemption date of the debentures. Despite the accused companies commitment, they failed to pay the payment towards the redemption of debentures as of 26.07.2012. In the meeting of the complainant and the accused on 23.07.2012 the accused Nos.2 and 3 had handed over cheques towards part payment of the principal amount and assured to hand over the cheques in respect of interest by 30.07.2012 under settlement letter dated 23.07.2012. It was assured by the accused that the principal would be paid in three equal monthly installments together with accrued interest on 1st August 2012 and 1st September 2012 and 1st October 2012. The accused had also promised to provide personal guarantee to the complainant in this regard. They handed over details of their assets and liabilities certified by statutory auditors along with projected monthly cash flow for the following 6 months commencing from 1-7-2012. The following cheques dated 01.08.2012 and 01.09.2012 signed by accused Nos.3 and 4 drawn on ICICI Bank, Secunderabad Branch were handed over to the complainant and the same were presented with the complainant's bank namely Standard Chartered Bank, Chennai and the cheques were returned for the reason "Funds Insufficient".

Sl. No.	Date of cheque	Cheque No.	Amount	Drawn on
1.	01-09-2012	002224	Rs.3,33,33,333/- (towards payment of portion of principal)	ICICI Bank Secunderabad Br.,
2.	01-09-2012	002499	Rs.6,36,986 (towards interest portion)	ICICI Bank Secunderabad Branch.
3.	01-08-2012	002223	Rs.3,33,33,333/- (towards payment of portion of principal)	ICICI Bank Secunderabad Br.,
4.	01-08-2012	002498	Rs.1,24,53,254 (towards interest portion)	ICICI Bank Secunderabad Br.,

Statutory demand notice were issued, the accused had received the notice and thereafter failed to pay the cheque amount within the statutory period. Hence, the above two cases came to be filed.

4.The accused filed the quash petitions on the ground that there is no cause of action pertaining to dishonor of cheques at Chennai and the complainant had deliberately filed the complaint in Chennai with the sole intention to harass the accused by making them to travel from Hyderabad and the complaint is a motivated one and manifestly attended with malafide. Further, the other ground is that the debenture issue was subscribed by institutional investors, IDBI Trusteeship service (IDBI Mumbai) and the accused have no direct transaction with the complainant. The accused bank is at Secunderabad and the cheques were dishonoured at Secunderabad, the statutory notice was also received by accused at Secunderabad. This being so, there is no cause of action for initiating a complaint under Section 138 of the Negotiable Instruments Act at Chennai. The only ground is that the complainant bank is situated within the jurisdiction of Court at Chennai. The other ground is that all the accused have been roped in on the bald and vague averment.

5.During the pendency of these quash petitions, by Act 26 of 2015, amendments were made in the Negotiable Instruments Act with effect from 15.06.2015 and Section 142(2) and Section 142-A was inserted and came into force.

6.Thereafter, Crl.M.P.No.3448 of 2019 in Crl.O.P.No.6119 of 2013 and Crl.M.P.No.3450 of 2019 in Crl.O.P.No.6120 of 2013 were filed with a plea to raise additional grounds that pending proceedings in C.C.Nos.3323 of 2012 & 3324 of 2012 before the VII Metropolitan Magistrate Court, George Town, Chennai. Canara Bank one of the financial creditor initiated proceedings under the Insolvency and Bankruptcy Code, 2016 against the accused company before the National Company Law, Tribunal Bench at Hyderabad. The Tribunal Bench by order dated 19.07.2017 ordered Moratorium prohibited the institution of suits for continuation of suits or proceedings. The above moratorium period was also extended by the National Company Law Appellate Tribunal, New Delhi. According to the accused, the term 'proceedings' mentioned in section 14 of the Insolvency and Bankruptcy Code, 2016 include section 138 Negotiable Instruments Act proceedings also since the Liability to pay the money arising out of business transaction of the company and as such proceedings of private complaint for the offence under Section 138 of Negotiable Instruments Act cannot be proceeded and the entire creditors have to make a claim before National Company Law Tribunal. Further, reiterated the plea that there is no direct transaction between the complainant and the accused. The complainant derives their right only through IDBI for debentures. Hence, if at all being a financial creditor the complainant is bound by the order of National Company Law Tribunal and as such Section 138 proceedings pending before Chennai Court in C.C.No.3324 of 2012 and C.C.No.3323 of 2012 cannot be proceeded with.

7.Further, raised a plea that there is no individual liability on the part of the accused and the entire money transactions are being operated by the interim resolution professional as such without the approval of National Company Law Tribunal, the matter cannot be settled. The petitioner had relied upon the decision of the Apex Court reported in 2018 (1) SCC 407, INNOVANTY INDUSTRIES LTD., VS., ICICI BANK AND ANOTHER and 2018(1) SCC 560 METERS AND INSTRUMENTS PVT. LTD., AND ANOTHER VS. KANCHAN MEHTA and propelled the arguments stating that once moratorium is announced by adjudicating authority under Section 13 and 14 of the Insolvency and Bankruptcy code, institution of suits and pending proceedings etc., cannot be proceeded with. This continues until the approval of a resolution plan under Section 31 of the said Code, in the interim an interim resolution professional appointed under Section 16 to manage the affairs of Corporate Debtors under Section 17. As per the Maharashtra Act relief undertaking (Special Provision) under Section 4, a Moratorium imposed would directly clash with the moratorium issued under Section 13 and 14 of the Insolvency code. There the issue is with regard to repugnance between Maharashtra Act and Insolvency Code. This citation is of no anvil to the case in hand. As regards to the other citation, the accused harped on the point that 138 case under Negotiable Instruments Act is primarily related to civil wrong.

8.The contention of the respondent is that the quash petitions are to be dismissed in limine and it has been filed to protract the proceedings. The cheques were presented to the complainant bankers viz., Standard Charted Bank, Rajaji Salai, Chennai and were dishonoured as "insufficient funds". The complainant had issued statutory notice to the accused. The accused had received the notice, neither settled the cheque amount nor sent any reply. Thereafter, following the statutory guidelines, case came to be filed before the jurisdictional Metropolitan Magistrate Court, Chennai. The Cognizance of case was taken on 06.11.2012, sworn statement was recorded on 28.11.2012, summons was issued to the accused on 28.02.2013. Further, in view of Section 142(2) of the Negotiable Instruments Act, it cannot be said that cognizance taken by the Metropolitan

Magistrate Court, George Town, Chennai is without jurisdiction when the complainant bank is situated within its jurisdiction. The ground challenging the jurisdiction by the accused is no longer available to the accused in view of the amendment to the Negotiable Instruments Act. The filing of Crl.M.P.No.3448 and 3450 of 2019 is nothing but yet another dilatory tactics adopted by the accused. The additional grounds raised relates to subsequent event which are nothing to do with cognizance of the complaint. The Canara bank one of the financial creditor has initiated proceedings under the Insolvency and Bankruptcy Code, 2016 against the accused company before the National Company Law Tribunal, Hyderabad on 19.07.2017 and declared moratorium prohibiting institution of suits or continuation of pending suits or proceedings. They are completely irrelevant and have no bearing on the complaint pending before the Metropolitan Magistrate, George Town.

9.The term "proceedings" as used in the provision does not include criminal proceeding and the term "proceeding" should be read ejusdem generis with the words suits used earlier. Therefore, it is only prohibition of institution or continuation of suits of like nature once the moratorium is declared by National Company Law Tribunal and does not include criminal proceedings. Therefore, there is no bar in proceeding against the accused under Section 138 of the Negotiable Instruments Act. By virtue of 141 of Negotiable Instruments Act accused Nos.2 to 4 are liable to be prosecuted. Further, proceedings pending before the trial court cannot be countermanded in view of subsequent development.

10.The learned counsel for the respondent relied upon the following citations:-

> 1.Order of NCLAT dated 31.07.2018 in Shah Brothers Ispat Pvt. Ltd., Vs. P.Mohanraj and others;
>
> 2.Tayal Cotton Pvt.Ltd., Vs. The State of Maharashtra and others reported in 2018 149 SCL 453 (BOM) dated 06.08.2018;
>
> 3.BSI Ltd., Ors. Vs. Gift Holdings Pvt.Ltd., and Ors. Reported in 2000 2 SCC 737, dated 15.02.2000; and
>
> 4.Indorama Synthetics (1) Ltd., Vs. State of Maharashtra and Ors. Reported in 2016 4 Mh.L.J.249 dated 06.05.2016.

11.Considering the rival submissions and the materials produced, this court finds the contention of the petitioners/accused, on the point of jurisdiction, is not tenable in view of Section 142(2)

Section 142(2)

The offence under section 138 of the Negotiable Instruments Act shall be inquired into and tried only by a court within whose local jurisdiction,-

> (a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or
>
> (b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation: For the purposes of clause (a), where a cheques is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account).

As regards to the other contentions raised by way of additional ground with regard to Section 14 of the Insolvency and bankruptcy code 2016 Section 14 moratorium.

> 11.14 Moratorium: (1) Subject to provisions of sub-sections (2) and (3) on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all the following, namely:-
>
> (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any Court of law, tribunal, arbitration panel or other authority;

12.The Apex court in the case of BSI Ltd., and others Vs. GIFT HOLDINGS Pvt.Ltd, had dealt elaborately, wherein BIFR U/s 16 of the SICA while dealing with identical situation invoking section 22(1) for nonpayment of amount covered by cheques issued by companies, taking recourse that declaration of companies as sick as envisaged in Sick Industrial Companies Special Provisions Act, 1985 no prosecution can be maintained under law against those companies under Negotiable Instruments Act. The Apex court had held as follow:

> "The word "suit" envisaged in Section 22 (1) cannot be stretched to criminal prosecutions. The suit mentioned therein is restricted to "recovery of money or for enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company. As the suit is clearly delineated in the provision itself, the context would not admit of any other stretching process."

13.A criminal prosecution is neither for recovery of money nor for enforcement of any security etc. Section 138 of the Negotiable Instruments Act is a penal provision, the commission of which offence entails a conviction and sentence on proof of the guilt in a duly conducted criminal proceedings. Once the offence under section 138 is completed the prosecution proceedings can be initiated not for recovery of the amount covered by the cheque but for bringing the offender to the penal liability. In the case of Maharashtra Tubes Ltd., whether the remedy provided in Section 29 or 31 of the State Finance Corporation Act, 1951 could be pursued notwithstanding the ban contained in Section 22 of the SICA. Hence the legal principle adumbrated in the said decision is of no avail to the petitioner.

14.In the above context it is pertinent to point out that section 138 of Negotiable Instruments Act was introduced in 1988 when SICA was already in vogue. Even when the amplitude of the word "company" mentioned in Section 141 of the N.I.Act was widened through the Explanation added to the section, Parliament did not think it necessary to exclude companies falling under section 22 of SICA from the operation thereof. If Parliament intended to exempt sick companies from prosecution proceeding, necessary provision would have been included in Section 141 of the N.I.Act. More significantly, when Section 22(1)of SICA was amended in 1994 by inserting the words "no suit for the recovery of money or for enforcement of any security against industrial company or of any guarantee in respect of any loans or advance granted to industrial company" Parliament did not specifically include prosecution proceedings within the ambit of the said ban.

15.The conclusion is that if commission of the offence under section 138 of the Negotiable Instruments Act was completed before the commencement of proceedings under section 22(1) of SICA there is no hurdle in any of the provisions of SICA against the maintainability and prosecution of a criminal complaint duly instituted under section 142 of the Negotiable Act.

16.In the case of INDORAMA SYNTHETICS INDIA LTD., VS. STATE OF MAHARASHTRA AND OTHERS, the High Court of Bombay have dealt with whether express provisions suit or other provisions in Section 446(1) and the expression 'suit or proceedings' in Section 442, under Chapter II of Part VII of the Companies Act, 1956 include criminal complaints filed U/s.138 of the Negotiable Instruments Act 1881 and on analyzing had given a detailed finding.

17.The sum and substance of the above decision is that the provisions of Section 446(1) of the Companies Act are to be invoked judiciously only when it has got any concern with either the winding-up proceedings or with the assets of the Company. The expression "suits or other proceedings", therefore, as used in Section 446(1) of the Companies Act, has to be construed accordingly and not to be interpreted so liberally and widely so as to include each and every proceeding of whatsoever nature initiated against the company, including criminal proceedings like for the offence under section 138 of N.I.Act, which has got no bearing on the winding-up proceedings of the Company and which are not concerned directly with the assets of the Company, but are mainly dealing with the penal and personal liability of the Directors of the Company.

18.The expression "suit or other proceedings" in Section 446 (1) under chapter II of Part VII of Companies Act 1956, does not include criminal complaints filed Under Section 138 of Negotiable Instruments Act 1881.

19.The High Court of Bombay in the case of TAYAL COTTON PVT.LTD., VS. STATE OF MAHARASHTRA in an identical situation has held as follows:

> "13.As can be seen from Clause (a) of Sub Section 1 of Section 14 of the Code, once the adjudicating authority declares moratorium for prohibiting institution of suits or continuation of pending suits or proceeding against the corporate debtor including execution of any judgment, decree or order in any Court of law, Arbitration Tribunal or other authority, the whole emphasis of the arguments of the learned advocate for the respondents 2 to 7 is on the words 'proceedings', 'order' and 'in any Court of law'. It has been submitted that these words

> do not precisely restrict its operation to only civil proceedings. The words are omnibus and even include a criminal proceeding including the one under Section 138 of the N.I Act"

20.On adumbration to the principle of interpretation of Statutes, these words would take colour from words preceding thereto. These words will have to be interpreted ejusdem generis with the words 'suits' used earlier thereto. So interpreted, the word 'proceedings' used therein and even the words 'order' and 'in Court of law' will have to be interpreted as a proceeding arising in the nature of a suit and orders passed in such proceedings and suits. Apart from the fact that the Legislature has not conspicuously used the words 'criminal' as an adjective to the word 'proceedings' and as an adjective to the noun 'Court of law'. It must be assumed that the Legislature in its wisdom has consciously omitted to use such adjectives, since it must have intended to prohibit only the suits and execution of the judgments and decrees or a proceeding of the like nature. Therefore, applying this principle of interpretation, one cannot put any other interpretation on this provision contained in Section 14 of the Code except that it only prohibits a suit or a proceeding of a like nature and does not include any criminal proceeding.

21.The onus of showing that a statue is repugnant to another has to be on the party attacking its validity. It must not be forgotten that every effort should be made to reconcile the competing statutes and constitute them both so as to avoid repugnance. Care should be taken to see whether that the two do not really operate in different fields qua different subject matters. It is to be seen that repugnance must exist in fact and not depend upon a mere possibility.

22.It is to be construed according to the natural meaning of the language used and not on the presumption that it intend to lead the existing law unaltered. The proper course is in the first instance to examine the language of the statue and to ask what its natural meaning uninfluenced by any considerations derived from the previous state of law and not to start with inquiring how the law previously stood and then assuming that it was probably intended to leave it unaltered. The inconsistency must be clear and direct and be of such nature as to bring the two acts are parts thereof into direct collusion with each other. Reaching a situation where it is impossible to obey the one without disobeying the other. This happens when two enactments produced different results when applied to the same facts.

23.The Apex Court in the following case had held that when in two Central Acts if there is repugnance or conflict, or run into each other what should be done has been detailed in the case of KANDLA EXPORT CORPORATION AND ANOTHER VS. OCI CORPORATION AND ANOTHER. It has dealt with a question as to whether an appeal not maintainable under section 50 of Arbitration and Conciliation Act 1996 is nonetheless maintainable under section 13(1) of the Commercial Codes, Commercial Division, Commercial Appellate Division of High Court Act 2015 wherein the Apex Court gone into the objects of both the statutes and had come to a conclusion that section 13(1) of the Commercial Courts Act must be construed in accordance with the object sought to be achieved by the Act. Any construction of Section 13 of Commercial Courts Act, which would lead to further delay, instead of an expeditious enforcement of a foreign award must, therefore, be eschewed. Even on applying the doctrine of harmonious construction of both statues, it is clear that they are best harmonized by giving effect to the special statutes, i.e., the Arbitration Act, vis-à-vis the more general statute, namely the Commercial Courts Act, being left to operate in spheres other than arbitration.

24.Drawing inspiration from the above looking at the object of introducing section 138 and other provisions of chapter XVII in the act in the year 1988 was to enhance the acceptability of the cheques in the settlement of liabilities and the object of the smooth functioning of business transaction. Proceedings under Section 138 cannot be treated as civil suit. The scheme providing with imprisonment or fine which would extend the twice of the cheque or both, makes the intention of law clear. Given the objects of both the statutes, it is clear that the Negotiable Instruments Act, 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 wherein a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument.

25.The objective of the Insolvency and Bankruptcy Code, 2015 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of Government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto and the Code seeks to provide for amendments in the Indian Partnership Act, 1932, the Central Excise Act, 1944, Customs Act, 1962, Income-Tax Act, 1961, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Finance Act, 1994, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, the Payment and Settlement Systems Act, 2007, the Limited Liability Partnership Act, 2008, and the Companies Act, 2013.

26.It is to be seen that section 138 of Negotiable Instruments Act was introduced in 1988 and the Insolvency and Bankruptcy code is of the year 2016. If parliament intended to exempt Negotiable Instruments Act proceedings from prosecution it could have included necessary amendments and provisions in the act.

27.The amendments in Negotiable Instruments Act are brought into for early disposal of cases relating to dishounour of cheques. Fast Track Courts have been constituted exclusively for the same.

28.In view of the above the miscellaneous petitions in Crl.M.P.No.3448 and 3450 to raise additional grounds are allowed and the quash petitions are dismissed. Since the cases are pending from the year 2012, the Trial Court is directed to dispose of the case in a time bound manner within a period of three months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

1.The VII Metropolitan Magistrate,
George Town, Chennai

2.The Public Prosecutor,
High Court, Madras.

+2 cc's to Mr.Rajasekar, Advocate Sr.No.42471

ORDER IN
Crl.O.P.Nos.6119 & 6120 of 2013
AND
Crl.M.P.Nos.3448 & 3450 of 2019

MG(CO)
CSL/20.06.2019