IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.8869 of 2018 and
Crl.M.P.Nos.4587, 4588 & 8466 of 2018

M/s.Nag Leathers Pvt Ltd,
Rep. by its Managing Director,
Mr.Chockalingam Pillai,
S/o.Subramani Pillai,
No.48, Sipcot Industrial Complex,
Sipcot, Ranipet - 632 403
Vellore District ... Petitioner/Accused

Vs.

M/s.Dynamic Marketing,
Partnership Rep. by its Partners
1.J.L.Sobhana
2.C.Narayanan
Partnership functioning at
No.82-A, Phase-II,
Sipcot Industrial Complex,
Sipcot, Ranipet - 632 403
Vellore District

Partnership Rep. by its Power of Attorney
K.Suresh ...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the entire records in pursuant to the criminal proceedings in C.C.No.05 of 2018 pending on the file of Court of District Munsif Cum Judicial Magistrate at Ranipet and quash the same.

For Petitioner : Mr.T.P.Prabakaran

For Respondent : Mr.Adinarayana Rao

ORDER

This petition has been filed as against the proceedings in C.C.No.05 of 2018 pending on the file of the learned District Munsif cum Judicial Magistrate, Ranipet.

2. The learned counsel for the petitioner submitted that the petitioner is the accused in the criminal proceedings initiated by the respondent for the offences punishable under Section 138 r/w 141 and 142 of Negotiable Instruments Act. The petitioner issued a post dated cheque in favour of the respondent for discharge of their debts arising out of supply of tanning chemicals for a sum of Rs.20,00,000/-. It was presented for collection and was returned dishonoured for the reason that 'funds insufficient'. After causing statutory notice, the respondent initiated proceedings under the Negotiable Instruments Act. He further submitted that the petitioner categorically replied for the statutory notice stating that the company M/s.Nag Leathers Private Limited was already taken over by the Interim Insolvency Resolution Professional as per the Order of National Company Law Tribunal, Division Bench, Chennai. He further submitted that one of the creditors filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal, Division Bench, Chennai, wherein the Interim Insolvency Resolution Professional was directed to take charge of the petitioner's Corporate Debtor's management immediately and also directed to cause public announcement as prescribed under Section 14 of the Insolvency and Bankruptcy Code, 2016 within three days. As such the institution of suits are continuation of suits or proceedings against the Corporate Debtor are barred after the Order of National Company Law Tribunal.

3. He further submitted that one, Mr.C.Ramasubramaniam was appointed as Interim Resolution Professional and made public announcement requesting all financial Creditors to submit their claims. In fact, the respondent submitted their claim and as such the proceedings initiated under Section 138 of Negotiable Instruments Act cannot be sustained against the petitioner. He further submitted that the alleged cheque was issued as security purpose and there is no legally enforceable debt over the respondent and as such the petitioner is not at all liable to pay anything to the respondent. Therefore, he prayed for quashment of the entire proceedings in C.C.No.05 of 2018.

4. Per contra, the learned counsel appearing for the respondent submitted that the petitioner is running a leather business in the name and style of M/s.Nag Leathers Private Limited. As requested by the petitioner, the respondent agreed to supply the tanning chemicals and supplied the same. During the course of business, the balance amount of Rs.20,00,000/- had become due and payable by the petitioner. The petitioner issued a post dated cheque in favour of the respondent for discharge of their debt arising out of supply of the tanning chemicals for the said sum. It was presented for collection and the same was returned dishonoured for the reason that 'funds insufficient'. After issuance of statutory notice, the respondent initiated proceedings under Section 138 of Negotiable Instruments Act as against the petitioner.

5. He further submitted that the initiation of proceedings under Section 138 of Negotiable Instruments Act is a statutory one and it is entirely different from other proceedings under the provision of Insolvency and Bankruptcy Code, 2016. It cannot be said that Section 14 of the Insolvency and Bankruptcy Code, 2016 prohibits continuation of criminal proceedings initiated for the dishonour of the cheque and it prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor. Therefore he prayed for dismissal of this quash petition.

6. Heard, the learned counsel for the petitioner and the learned counsel for the respondent.

7. The respondent initiated proceedings for the offence punishable under Section 138 r/w 141 and 142 of Negotiable Instruments Act as against the petitioner. The petitioner issued a cheque for a sum of Rs.20,00,000/- for the supply of the tanning chemicals to the respondent herein. It got dishonoured and the respondent caused statutory notice and initiated the proceedings. In the meanwhile, one of the Creditors to the petitioner filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 in which one Mr.C.Ramasubramaniam was appointed as Interim Resolution Professional. Thereafter he published an announcement requesting all financial Creditors to the petitioner company to submit their claims.

8. Therefore, the only question arises for consideration is that whether there is statutory bar to initiate the proceedings under Section 138 of Negotiable Instruments Act against the petitioner when the petitioner was declared as insolvent?

9. Admittedly after issuance of cheques to the respondent for the purchase of the tanning chemicals, one of the Creditors initiated proceedings under Section 9 of the Insolvency and Bankruptcy Code against the respondent. As pointed out by the learned counsel for the respondent, the offence under the Negotiable Instruments Act is a statutory one and the proceedings under the Negotiable Instruments Act is completely different from the Corporate Insolvency Resolution process under the Insolvency and Bankruptcy Code, 2016. The Section 14 of Insolvency and Bankruptcy Code, 2016 prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor. It means only civil proceedings and not criminal proceedings as against the debtor.

10. In this regard, the learned counsel for the petitioner has relied upon the judgment in the case of B.Kannan Vs. B.C.Santhanam reported in 1999 CriLJ 2236, wherein it is held as follows:

> "9. As indicated earlier, this Revision has to be dismissed even at the admission state on two I ground under:-
> (1) There is no provision for the summon cases to file an application for discharge under Section 245, Cr.P.C. that too, after all the witnesses have been examined. Therefore, the order of the trial Court dismissing the application for discharge is perfectly valid.
>
> (2) There is no prohibition either in the Insolvency Act or in the Negotiable Instruments Act for the complainant to approach the criminal Court to take penal action against the accused for the offence already committed under Section 138 of the Negotiable Instruments Act either because the insolvency proceedings are pending or even he was declared as an insolvent. The protection given under Sections 29 and 31 of the Provisional Insolvency Act is extended to the debtor in respect of civil detention and civil arrest alone. It would not cover the proceedings under Section

138 of the Negotiable Instruments Act. Therefore, on this ground also, this application has to be dismissed."

11. This Court has held that there is no prohibition either in the Insolvency Act or in the Negotiable Instruments Act for the complainant to approach the criminal court to take penal action against the accused for the offence already committed under Section 138 of Negotiable Instruments Act either because the insolvency proceedings are pending or even he was declared as an insolvent. Therefore there is no bar to initiate proceedings under the criminal law against the debtor, though he was declared as an insolvent. The bar has been extended only in respect of civil detention and civil arrest. It would not cover the proceedings under Section 138 of Negotiable Instruments Act. It is relevant to extract the Section 14 of Insolvency and Bankruptcy Code, 2016.

"14(1)a. The institution of the suits or continuation of the pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority.

b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein."

12. The Section 138 of Negotiable Instruments Act is a penal provision which empowers the court of competent jurisdiction to pass the order of imprisonment or fine. It is not the civil proceedings and even fine imposed by the criminal court cannot held to be a money claim or recovery against Corporate Debtor. It is seen from the above provision, the criminal proceedings is not covered under the prohibition and as such the petitioner cannot have a shelter under Section 14 of Insolvency and Bankruptcy Code. Therefore, the petition is devoid of merits and it is liable to be dismissed.

13. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

lok

To

The District Munsif Cum
Judicial Magistrate,
Ranipet

+1cc to Mr.T.P.Prabakaran, Advocate SR.No.31752

+1cc to Mr.Adinarayana Rao, Advocate SR.No.32652

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VSN II(CO)
GMY(03/05/2019)