

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.7968 of 2019 and
CrI.M.P.Nos.4306 & 4308 of 2019

1.Exelan Networking Technologies Pvt. Ltd.,
Represented by its Managing Director,
Mr.Premdoss Samson,
(5/310, Pillaiar Koil Street,
Okkiampet, Thoraipakkam,
Chennai - 600 096)
No.30, Kasuribai Nagar 1st Street,
Adyar, Chennai - 600 020

2. Premdoss Samson

3. Samson Anita

... Petitioners

.Vs.

M/s.Cadensworth India Limited,
Merged with M/s.Redington India Ltd.,
Rep. by Mr.K.Shanmugam,
Senior Manager - Accounts,
SPL Guindy House,
95, Mount Road, Guindy,
Chennai - 600 032

... Respondent

PRAYER: Criminal Original Petition filed under Section 482
Cr.P.C. praying to call for the records in C.C.No.180 of 2018 on
the files of XVIII Metropolitan Magistrate, Saidapet, Chennai
and quash the proceedings.

For Petitioners: Mr.T.V.Lakshmanan

For Respondent : Mr.V.T.Narendiran

ORDER

This Criminal Original Petition has been filed to quash the
proceedings in C.C.No.180 of 2018 on the file of the XVIII
Metropolitan Magistrate, Saidapet, Chennai.

2. The learned counsel for the petitioners submitted that the respondent initiated proceedings for the offence under Sections under Sections 138 & 141 of Negotiable Instruments Act as against the petitioners alleging that the first petitioner / accused company acting through its Directors had approached the respondent to place orders for purchase of Panduit Networking equipments etc under invoice. After receipt of the goods, the petitioners issued a cheque and the same was presented for collection. The said cheque was returned dishonoured with the endorsement 'refer to drawer'. After causing statutory notice, the respondent initiated proceedings under Sections 138 and 141 of Negotiable Instruments Act as against the petitioners.

2.1. He further submitted that the complaint itself is not maintainable since the respondent was merged with M/s.Redington India Limited as per the sanction order of National Company Law Tribunal, Division Bench, Chennai dated 22.07.2017 and M/s.Cadensworth India Limited was dissolved as such it has legal effect under Section 233 (7) of the Companies Act, 2013. Further he submitted that M/s.Cadensworth India Limited having been dissolved it does not exist in the eye of law and cannot maintain the complaint under Section 138 of Negotiable Instruments Act. Further he submitted that the cheque bearing No.012474 dated 03.07.2017 was issued to M/s.Cadensworth India Limited by the first petitioner in the year June 2013 as security for supply made then.

2.2. In this regard, the learned counsel for the petitioners relied upon the following judgments:

- (i) In the case of Peirce Leslie and Co. Ltd Vs. Violet Ouchterlony Wapshare and Ors reported in AIR 1969 SC 843.
- (ii) In the case of Saraswati Industrial Syndicate Ltd. Vs. Commissioner of Income Tax reported in AIR 1991 SC 70 and
- (iii) In the case of Speedline Agencies Vs. T.Stanes and Co.Ltd. reported in 2010 (4) CTC 573.

3. The learned counsel for the respondent submitted that the petitioners issued cheque for the purchase of panduit Panduit Networking equipments etc and towards the amount due for a sum of Rs.39,09,258/- a cheque bearing No.012474 dated 03.07.2017 was issued. It was presented for collection and the same was returned dishonoured with the endorsement 'refer to drawer'. After causing statutory notice, the respondent initiated proceedings under Sections 138 & 141 of Negotiable Instruments Act. He further submitted that though M/s.Cadensworth India Limited merged with M/s.Redington India Limited, the complaint has been filed and specifically mentioned that M/s.Cadensworth India Limited merged with M/s.Redington India Limited. Therefore, it cannot be said that transferrer company alone

entitled to deposit the cheque and transferee company has no locus to encash the cheque.

3.1. He further submitted that the order passed by the National Company Law Tribunal dated 22.07.2017 was not implemented and M/s.Cadensworth India Limited only issued statutory notice to the petitioners. After receipt of the reply notice dated 08.08.2017, the respondent issued rejoinder to the reply in which they categorically mentioned that M/s.Cadensworth India Limited subsequently merged with M/s.Redington India Limited. Therefore, he prayed for dismissal of this quash petition. He relied upon the judgment in the case of Surendra Mal Mehta and Another Vs. Gillette India Ltd reported in 2006 (133) Comp Cas 412.

4. Heard, the learned counsel for the petitioners and the learned counsel for the respondent.

5. The petitioners are accused in the proceedings initiated by the respondent for the offence punishable under Sections 138 & 141 of Negotiable Instruments Act. The learned counsel for the petitioners raised the ground that the complaint is not maintainable since M/s.Cadensworth India Limited merged with M/s.Redington India Limited and as such the complaint filed by M/s.Redington India Limited is not maintainable since the original payee is not existing at the time of initiation of proceedings under Section 138 of Negotiable Instruments Act. M/s.Cadensworth India Limited had dissolved and does not exist in the eye of law since it was dissolved and merged with M/s.Redington India Limited.

6. It is seen from the statutory notice issued by M/s.Cadensworth India Limited on 24.07.2017. Admittedly, the amalgamation was effected only thereafter that too after the order of National Company Law Tribunal dated 22.07.2017. It is also evident that after receipt of the reply notice, the respondent issued rejoinder and categorically mentioned that M/s.Cadensworth India Limited merged with M/s.Redington India Limited. Even in the complaint, they specifically stated that M/s.Cadensworth India Limited merged with M/s.Redington India Limited.

7. Therefore, the judgments relied upon by the petitioners are completely held in different set of facts in the civil disputes and decided in respect of liability. Therefore, those judgments are not relevant to the case on the hand. Whereas the judgment relied upon by the respondent in the case of Surendra Mal Mehta and Another Vs. Gillette India Ltd reported in 2006 (133) Comp Cas 412, wherein it is held as follows:

"10. Learned counsel for the petitioner produced

an authority in Goa Plast (P) Ltd. v. Chico Ursulu D'souza wherein the Hon'ble Supreme Court has observed that the relationship between drawer and payee is irrelevant and existence of mercantile relationship between drawer and payee is not required to establish the offence under Section 138 of the Negotiable Instruments Act."

8. This Court has held in view of the order passed by the Hon'ble Supreme Court of India that the relationship between the drawer and the payee is irrelevant and existence of mercantile relationship between the drawer and the payee is not required to establish the offence under Section 138 of Negotiable Instruments Act.

9. In the case on hand, the statutory notice issued by M/s.Cadensworth India Limited and while issuing rejoinder to the reply notice, they mentioned as M/s.Cadensworth India Limited merged with M/s.Redington India Limited. Further it is also seen from the complaint they mentioned as M/s.Cadensworth India Limited merged with M/s.Redington India Limited. Therefore to initiate proceedings under Section 138 Negotiable Instruments Act as held by the Hon'ble Supreme Court of India the relationship between the drawer and the payee is irrelevant and the existence of mercantile relationship between the drawer and payee is not required to initiate the proceedings under Section 138 of Negotiable Instruments Act. Therefore, this Court finds no merits in this quash petition and the petition is liable to be dismissed.

10. Accordingly, this Criminal Original Petition is dismissed. However, considering the case is of the year 2018, the learned XVIII Metropolitan Magistrate, Saidapet, Chennai is directed to complete the trial in C.C.No.180 of 2018 within a period of three months from the date of receipt of this Order. Consequently, connected miscellaneous petitions are closed.

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सत्यमेव जयते

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To
The XVIII Metropolitan Magistrate,
Saidapet, Chennai

2. -Do- Thro' The Chief Metropolitan Magistrate,
Chennai.

+1cc to Mr.T.V.Lakshmanan, Advocate, SR.No.41453

Crl.O.P.No.7968 of 2019
and
Crl.M.P.Nos.4306 & 4308 of 2019

Kak (25/06/2019)



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