IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.7004 of 2014
and
M.P.Nos.1&2 of 2014

M.V.Ganesan ...Petitioner

Vs.

M/s. Small Industries Development Bank of India,
Represented by its Authorised Representative
Mrs.Indumathi Sridhar, Deputy General Manager,
756, L, Overseas Tower, Anna Salai,
Chennai - 600 004. ... Respondent

Prayer:

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.4712 of 2013, on the file of the learned XIV Metropolitan Magistrate, Egmore and quash the same.

For Petitioner : M/s.U. Baranidharan

For Respondent : M/s. Ganesh and Ganesh

O R D E R

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.4712 of 2013 pending on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai.

2. The respondent/complainant filed a private complaint under Section 200 of Criminal Procedure Code against the petitioner/A4 for the offence punishable under section 138 of the Negotiable Instruments Act, (hereinafter referred to as the 'NI Act') 1881.

3. The gist of the complaint is that the petitioner had availed a loan from the respondent for a sum of Rs.15,00,00,000/- (Rupees Fifteen Crore Only) and he has been executed a promissory note with the complainant. It is the further case of the respondent that the petitioner/A4 issued a

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

cheque bearing Nos.010604, 010605, 010606, dated 19.06.2013 for a sum of Rs.1,00,00,000/- (Rupees One Crore Only) and when the cheques were presented for encashment by the respondent through his bankers viz., M/s.ICICI Bank Limited on 20.06.2013, all the three cheques were dishonoured for the reason ''Funds Insufficient". The respondent that the aforesaid cheques each for a sum of Rs.1,00,00,000/- was drawn by the petitioner in favour of the complainant only towards a legally enforceable debt due and payable by the petitioner for the loan received by the petitioner from the complainant. Thereafter, the respondent issued a notice dated 12.07.2013 to the petitioner calling upon him to repay the loan amount of the dishonoured cheques, viz., a sum of Rs.3 Crore within fifteen days from the date of receipt of the notice by the accused. After receiving the said notice, on 13.07.2013, the petitioner has failed to discharge their liability by paying the value of the dishonoured cheques, viz., Rs.3 Crore till date. Therefore, the respondent filed a private complaint under Section 200 of Criminal Procedure Code before the learned XIV Metropolitan Magistrate, Egmore, Chennai, for the alleged offence punishable under section 138 of the Negotiable Instruments Act, 1881.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

5. It is seen that the petitioner, who has been arrayed as A4 in C.C.No.4712 of 2013 on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai, was working as Vice President, Corporate Accounts in the first accused company at the relevant point of time. It is also seen that he has been authorised to issue cheques on behalf of the third accused and also the authorised representative of the first accused in the capacity of an authorised representative, but he was in no way involved in the day to day affairs of the Company.

6. Nothing has been placed on record to show that the petitioner was actively involved in the day to day affairs of the first accused company. It is the specific case of the petitioner that on the alleged date of commission of the offence under Section 138 read with 141 of the Negotiable Instruments Act. The petitioner was not at all involved in the affairs of the company. The said plea of the petitioner has not been rebutted by the complainant by adducing any evidence. That apart, no specific overtact has been attributed against the petitioner.

7. On a perusal of the records it is seen that the petitioner who is the fourth accused in the complaint has resigned from the company way back on 05.04.2013 and the same

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

was also accepted by the first accused company. That apart, an affidavit of undertaking has been given by one Ramanujam Sesharathnam who is the third accused in the complaint, wherein it is specifically stated that:

> "5. I state that M.V.Ganesan had no personal role to play in the dishonour of these cheques and was only acting at my behest and he was only the employee of the company and not connected with the business or management of the company.
>
> 6. I state that M.V.Ganesan submitted his resignation by mail on 05.04.2013, however we have requested him to continue to do his work only because we require his assistance during the troubling period of the Company.
>
> 7. He also does not hold any stake in the Company nor he was or is responsible at any point of time regarding the day to day affairs or the business of the Company.
>
> 8. I hereby declare that in the event of any legal action being initiated against M.V.Ganesan on account of the dishonour of Company cheques, his liability may be eschewed in any Court of Law, Civil or Criminal, pertaining to the act of the Company cheques being dishonoured or the claims arising out of such Company dishonoured cheques.

8. For the foregoing reasons, the Criminal Original Petition is allowed and the proceedings in C.C.No.4712 of 2013 pending on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai, is quashed in sofar as the petitioner/A4 is concerned. The learned XIV Metropolitan Magistrate, Egmore, Chennai, is directed to complete the trial in respect of other accused within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

सत्यमेव जयते

Sd/-

Assistant Registrar (CS-V)

WEB COPY

//True Copy//

Sub Assistant Registrar

msm

https://hcservices.ecourts.gov.in/hcservices/

To

1.The XIV Metropolitan Magistrate,
Chennai.

+1cc to Mr. U.Bharanidharan, Advocate, S.R.No. 27781

Crl.O.P.No.7004 of 2014

NRL(CO)
GN(06/05/2019)

https://hcservices.ecourts.gov.in/hcservices/