

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 14.02.2019

CORAM:
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.6042 of 2014
and M.P.No.1 of 2014

1. Sri Srivathsa Paper Mills Pvt Ltd.,
By its Managing Director Mr.Venugopal,
93-C, Ramachandra Road,
R.S.Puram, Coimbatore.
2. P.Venugopal
3. Karthick
4. Kandasamy ...Petitioners/Accused 1 to 3 & 5

Vs.

M/s.Azhar Traders,
By its Proprietor Mohammad Ali,
Having its Office at 5/69,
Arumugam Lay Out,
Jeeva Nagar, Udumalpet. ...Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to C.C.No.133 of 2013 on the file of Judicial Magistrate No.1, Udumalpet and quash the complaint.

For Petitioners : Mr.R.Saravanakumar

For Respondent : Mr.N.Umpathi

O R D E R

The present Criminal Original Petition has been filed to quash the proceedings in C.C.No.133 of 2013 on the file of Judicial Magistrate No.1, Udumalpet, on the ground that already as against the 6th accused, another complaint is pending in C.C.No.273 of 2013 filed by the respondent-complainant on the file of Judicial Magistrate No.1, Udumalpet, for a sum of Rs.2,60,000/-.

2. The learned counsel appearing for the petitioners submitted that total liability was also disputed. Further, he submitted that the petitioners are enacted as Directors only after the liability by the Company to the defacto-complainant. Therefore, as against the petitioners, there is absolutely no legal enforceable debt by the respondent-company. Hence, the complaint is liable to be quashed.

3. Per contra, the learned counsel appearing for the respondent submitted that at the time of issuance of cheque, the petitioners are Directors and they have involved day-to-day affairs of the Company and the petitioners and other accused only issued a cheque. In respect of another complaint in C.C.No.273 of 2013 as against the 6th accused in this case is completely different transaction and no way connected in the present transaction. Therefore, he sought for dismissal of the quash petition.

4. Heard the learned counsel appearing on both sides and perused the materials available on record.

5. The respondent-Company filed a complaint for the offence under Section 138 of Negotiable Instruments Act, against the petitioners and others in C.C.No.133 of 2013 on the file of Judicial Magistrate No.1, Udumalpet. The Company/1st accused was engaged in the business of processing, recycling and manufacture of paper and paper products. The defacto-complainant is a supplier of fuel to the Company under credit basis. The complainant has been maintaining the statement of account for the supply of fuel to the accused-Company for more than five years. The defacto-complainant has supplied fuel to the accused-Company from April, 2010, to March, 2011, and there was a due of Rs.15,65,298/-, which the accused-Company did not pay. After repeated demands made by the complainant, the accused issued a cheque for a sum of Rs.18,25,000/- towards the payment to the balance amount. The said cheque was presented for collection and the same was returned unpaid for the reason "insufficient funds". Therefore, the respondent/complainant initiated proceedings under Section 138 of Negotiable Instruments Act as against the petitioners and others.

6. From the records, it is seen that at the time of inducting the petitioners as Directors, there was a due from the accused Company to the defacto-complainant. At the time of issuance of cheque, the petitioners are very much aware of the day-to-day affairs of the Company. Further, it is also seen that there is a specific allegation and averment as against the petitioners.

7. Therefore, this Court is not inclined to quash the proceedings in C.C.No.133 of 2013 pending on the file of Judicial Magistrate No.1, Udumalpet. Accordingly, this Criminal Original Petition is dismissed. However, the petitioners are at liberty to raise all the points before the trial Court during the trial. Considering the case of the year 2013, the trial Court is directed to complete the trial within a period of three

(3) months from the date of receipt of a copy of this order.
Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

asi/rna

To

1.The Judicial Magistrate No.1,
Udumalpet.

2.The Chief Judicial Magistrate,
Nilgiris.

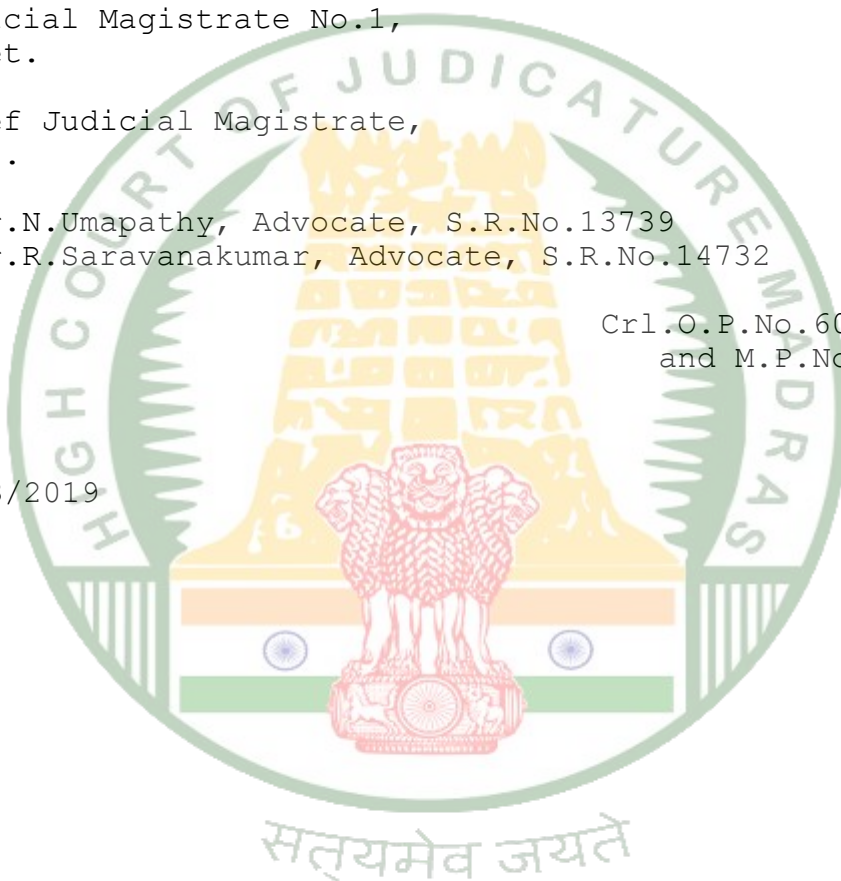
+1cc to Mr.N.Umapathy, Advocate, S.R.No.13739

+1cc to Mr.R.Saravanakumar, Advocate, S.R.No.14732

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RV(CO)

rrs 27/03/2019



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