IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.15882 of 2014
M.P.Nos. 1 & 2 of 2014

1. V.Girija
2. V.Sasikala ... Petitioners

Vs.

M/s. Sri Vaisnavi Traders
Rep by its Partner G.Thiyagarajan,
S/o.C.Gopal,
114/147, Radio Park East Street,
Sanjeevirayanpet, Salem-6. ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records and quash the proceedings before the learned Judicial Magistrate-3, Salem in S.T.C.No.71 of 2014.

For Petitioners : Mr.T.K.S.Gandhi

For Respondent : Mr.K.Kuppusamy

O R D E R

This petition has been filed to quash the proceedings in S.T.C.No.17 of 2014 on the file of the learned Judicial Magistrate No.III, Salem.

2. The learned counsel appearing for the petitioners submitted that the respondent initiated proceedings for the offence punishable under Section 138 of Negotiable Instruments Act. There are totally five accused persons, in which the petitioners are arraigned as A3 and A5. The alleged cheques were presented after statutory period of three months. According to the respondent, the cheques were issued on 03.07.2013 and the same were presented on 04.11.2013 viz., after the period of three months from the date of the issuance of the cheques. Therefore, it is barred as per the Negotiable Instruments Act. Under Section 35A of Banking Regulation Act 1949, the Reserve Bank of India had directed the banker should not make payment of cheques/drafts/pay orders/banker's cheques bearing that date or any subsequent date, if they are presented beyond the period of

three months from the date of such instruments. Further he submitted that the petitioners are no way connected with the transactions of the firm and they had no knowledge about the alleged cheques issued by the second accused. Further he submitted that there is no legally enforceable debt by the petitioners and the petitioners are never participated in the day to day activities of the firm viz., the first accused. Therefore, he prayed for quashing the entire proceedings.

3. Per contra, the learned respondent/defacto complainant submitted that there are totally five accused, in which the petitioners are arraigned as A3 and A5. They are actively participated in the day to day activity of the firm and they are also liable to prosecute. Further he submitted that the points raised by the petitioners have to be established only during the trial. Therefore he prayed for dismissal of the quash petition.

4. Heard Mr.T.K.S.Gandhi, learned counsel appearing for the petitioners and Mr.K.Kuppusamy, learned counsel appearing for the respondent.

5. The respondent filed complaint for the offence under Sections 138 and 142 of Negotiable Instruments Act as against the five accused persons, in which the petitioners are arraigned as A3 and A5. The alleged cheques even as per the complianant issued on 03.07.2013 drawn on Axis Bank, Gugai Branch bearing cheque Nos.033526 and 033527 for the sum of Rs.2,20,250/- and Rs.1,10,727/- respectively. Those cheques were presented by the defacto complainant on 04.11.2013 through his banker Canara Bank, Gugai Branch for collection. One of the cheque was returned dishonoured for the reason that "Insufficient fund" and insofar as the another cheque is concerned, it was returned for the reason that "Stop payment" given by the drawer of the cheque.

6. Admittedly, the petitioners are not the signatory of the cheques. The cheques issued in the name of the first accused namely, Sri Venkatadri Textile singed by one of the partner, the second accused. Though the petitioners are claiming to be a sleeping partners of the first accused, in the complaint, the respondent stated that the petitioners are actively participated in the business of the first accused and therefore, they directly involved in the day to day affairs of the first accused.

7. The only point for consideration is that whether the cheques issued by the second accused were presented within the time framed by the Reserve Bank of India under the Banking Regulation Act.

8. The alleged cheques dated 03.07.2013 issued by the petitioners' company in favour of the defacto complainant, were presented only on 04.11.2013 for collection through Canara Bank, Gugai branch. Both the cheques were returned dishonoured for the reason that insufficient fund and stop payment issued by the drawer of the cheque, respectively. The Reserve Bank of India vide their Circular RBI/2011-12/251/DBOD.AML BC.No.47/ 14.01.001/2011-12 dated 4th November 2011 instructed all the Banks to reduce the validity period of the Cheque/Draft/Pay Order/Banker's Cheque from six (6) months to three (3) months from the date of issue, effected from 1st April 2012. The relevant portion of the said circular reads as follows :-

> "2. It has been brought to the notice of Reserve Bank by Government of India that some persons are taking undue advantage of the said practice of banks of making payment of cheques/drafts/pay orders/banker's cheques presented within a period of six months from the date of the instrument as these instruments are being circulated in the market like cash for six months. Reserve Bank is satisfied that in public interest and in the interest of banking policy it is necessary to reduce the period within which cheques/drafts/pay orders/banker's cheques are presented for payment from six months to three months from the date of such instrument. Accordingly, in exercise of the powers conferred by Section 35A of the Banking Regulation Act, 1949, Reserve Bank hereby directs that with effect from April 1, 2012, banks should not make payment of cheques/drafts/pay orders/banker's cheques bearing that date or any subsequent date, if they are presented beyond the period of three months from the date of such instrument."

Therefore the instruments which were issued by the petitioners ought to have been presented within the period of three months.

9. Admittedly, the alleged cheques in the case on hand, were presented after the period of three months. Therefore, the instruments become invalid. In fact, the banker should have returned them as invalid. However both the cheques were dishonoured for the reasons stated above. Therefore, there is no cause of action to initiate the proceedings under Section 138 of Negotiable Instruments Act, as against the petitioners. That

apart, it is also seen from the reply notice that the alleged cheques were signed by one of the partner and the petitioners were shown as only sleeping partners and they never participated in the day to day activities of the company and the issuance of the cheques by the other accused. Considering the above facts and circumstances, the entire proceedings are vitiated and it is liable to be quashed.

10. Accordingly, this Criminal Original Petition stands allowed and the proceedings in S.T.C.No.71 of 2014 on the file of the learned Judicial Magistrate-3, Salem is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rts

To

The Judicial Magistrate Court-III,
Salem.

+1 cc Mr.TK.S.Gandhi, Advocate Sr.No.18796

CRL.O.P.No.15882 of 2014
and M.P.Nos. 1 & 2 of 2014

RR(CO)
CSL/10.04.2019