

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.No.19257 of 2014
and
M.P.No.1 of 2014

1.M/s.Yogesh Milk Centre

Rep. By its Proprietor S.Sujatha

2.S.Sujatha

...Petitioners / Accused

Vs.

M/s.Hatsun Agro Products Ltd.,

Rep. By its Legal Officer & HR

Mr.Hariram Registered Office at

No.1\20A, Rajiv Gandhi Salai (OMR)

Karapakkam, Chennai - 97.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the C.C.No.222 of 2013 pending on the file of the Learned Judicial Magistrate/ FTC at Alandur, Chennai and quash the same.

For Petitioners : Mr.M.Guruprasad

For Respondent : No Appearance

O R D E R

The present Criminal Original Petition has been filed to call for the records relating to the C.C.No.222 of 2013 pending on the file of the Learned Judicial Magistrate/ FTC at Alandur, Chennai and quash the same.

2.The learned counsel for the petitioner submitted that there is no subsisting legally enforceable debt existing between the parties. It is even according to the complaint is bereft of any particulars and the respondent had not even stated the date of purchase in the complaint and did not enclose any invoices. Further, he submitted that the alleged cheque had been issued in the year 2011 for a secured debt and the cheque was misused by the respondent. Even as per the complaint the business is cash and carry by the distributors for the milk purchased. The

alleged cheque was given in the year 2011. In fact the other connected cheques were presented by the respondent and the same were honoured in the year 2011 itself.

2.1.The case of the respondent is that for the month of May and June 2013 there is an outstanding due for a sum of Rs.2,82,976/- for which, on 11.06.2013, the second petitioner alleged to have executed the disputed cheque. Further, he submitted that on 31.05.2013, the respondent received a sum of Rs.1,12,725/- from the petitioners. While, it is being so, there is absolutely no possibility of issuance of the alleged cheque on 11.06.2013. Therefore, the learned Magistrate ought not to have taken cognizance of the offence punishable under Section 138 of the Negotiable Instrument Act. He also relied upon the Judgment in 2018(3) MWN (Cr.) DCC 63 (Mad.) Karthik V.R.Thondaiman -vs- R.M.Karthikeyan and prayed to quash the proceedings.

3.Though the notice to the respondent was served none appeared on behalf of the respondent.

4.Heard Mr.M.Guruprasad, learned counsel appearing for the petitioners and none appeared on behalf of the respondent.

5.The petitioners are arrayed as A1 and A2 in C.C.No.222 of 2013 initiated by the respondent for the offence punishable under Section 138 r/w 142 of the Negotiable Instrument Act. The crux of the complaint is that the first accused represented by its proprietor namely the second accused is the distributor of the respondent / de-facto complainant in Arakonam Area to supply Aroky Brand Liquid Milk to customers.

5.1.The petitioners entered into the business contract with the respondent and the business is cash and carry method and there was instructions to the distributors to repay the cash to the company for which they have purchased Milk on earlier day from them. Accordingly, the petitioners purchased Milk from the respondent for a sum of Rs.2,82,976/- for the month of May and June 2013. For the said business transaction the petitioners issued a cheque dated 11.06.2013 for a sum of Rs.2,82,976/- and the said cheque was presented for collection and the same was returned dishonoured for the reason insufficient funds. Therefore, the respondent caused legal notice and initiated proceedings for the offence punishable under section 138 of the Negotiable Instrument Act. According to the petitioners, the

cheque in dispute was issued at the time of inception of business as security in the year 2011 itself and the said cheque was misused by the respondent for no subsisting legally enforceable debt. It is seen from the statement of accounts of the petitioners that on 31.05.2013 through ECS a sum of Rs.1,12,725/- was debited in favour of Hatsun Agro Products namely the respondent herein.

5.2.Further, it is seen from the notice sent by the petitioners dated 15.06.2013, calling upon the respondent to immediately return the unused cheques which were given to the respondent as security purpose and for caution deposit since, they broke up the business transaction between the petitioners and the respondent and the respondent was not interested to carry on the business with the petitioners. Even then the respondent presented the cheque bearing No.644928 and the same was returned dishonoured. It is also seen from the statement of accounts of the petitioners from 25.12.2011 to 31.01.2012, that the cheque bearing Nos.644925, 644926, 644927 were honoured on 02.01.2012, 03.01.2012 and 04.01.2012 respectively.

5.3.Thereafter, periodically by ECS the amount has been debited in favour of respondent daily from the account of the petitioners. In the present complaint the disputed cheque number is 644928. Therefore, the cheque would have been issued in the year 2011 itself to the respondent, it is also evident that three payments were cleared by the petitioners through cheque in favour of the respondent and thereafter, the amounts were settled through ECS in favour of the respondent. Therefore, it is construed that the cheque was issued as security at the time of starting the business between the petitioners and the respondent. In this regard, the learned counsel for the petitioner relied upon the Judgment in 2018 (3) MWN (Cr.) DCC 63 (Mad.) Karthick V.R.Thondaiman -vs- R.M.Karthikeyan as extracted hereunder:

"9.The learned counsel appearing for the respondent would rely upon the Judgment in HMT Watches Ltd., v. M.A.Abida, 2015(1) MWN (Cr.) DCC 168 (SC) : 2015(2) CTC 446 (WC): and Sampelly Satyyanarayana Rao v. Indian Renewable Energy Development Agency Ltd., 2016(3) MWN (Cr.) DCC 56 (SC): 2016(5) CTC 563 (SC): 2016(10) SCC 458, wherein, the Hon'ble Supreme Court held that quashing of Criminal Complaint on disputed question of facts under Section 482 of Cr.P.C is

unwarranted and it has to be gone into by full fledged trial by the Trial Court. Further, it has been held that the Post-Dated Cheques described as 'Security' towards repayment of installment of already disbursed Loan amount, proceeding under Section 138 of N.I. Act is maintainable, in case of dishonour of such Cheques.

10.It is seen from the facts and circumstances of this case, though it is disputed questions of facts, from seeing the Notice dated 22.11.2005 and the Reply Notice dated 02.12.2005, it is clear abuse of process of law. Therefore, the above Judgments cited by the learned Counsel appearing for the Respondent are not applicable to the present case on hand. That apart, the alleged Cheques were not issued for any legally enforceable debt. It is also proved from the Notice dated 22.11.2005 that the said alleged Cheques and other Pro-Notes were obtained by the Respondent / Complainant at the time of borrowal of Loan in the year 2003 & 2004. Therefore, the alleged Cheques were not issued by the Petitioner for any legally enforceable debt. In such circumstances, the Petitioner cannot be subjected to ordeal of trial. Therefore, the complaint cannot be sustained and it is liable to be quashed."

The above Judgment squarely applies to the present case. The disputed cheque in the complaint is issued by the petitioners only for security purpose at the time of initiation of business transaction between the petitioners and the respondent. It is also evident from the statement of accounts of the petitioners that the same serial numbers of the cheque were honoured in the year 2012 itself and thereafter, the payments were made by the petitioners through ECS. Therefore, the cheque is not issued for any legally enforceable debt existing between the parties. In fact, the petitioners also issued notice on 15.06.2013 itself thereby calling upon the respondent to return the cheques which were given as security purpose. Therefore, the complaints cannot be sustained as against the petitioners.

6.In view of the above, this Criminal Original Petition is allowed. The entire proceedings in C.C.No.222 of 2013 on the file of the learned Judicial Magistrate / FTC at Alandur, Chennai is quashed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

rna

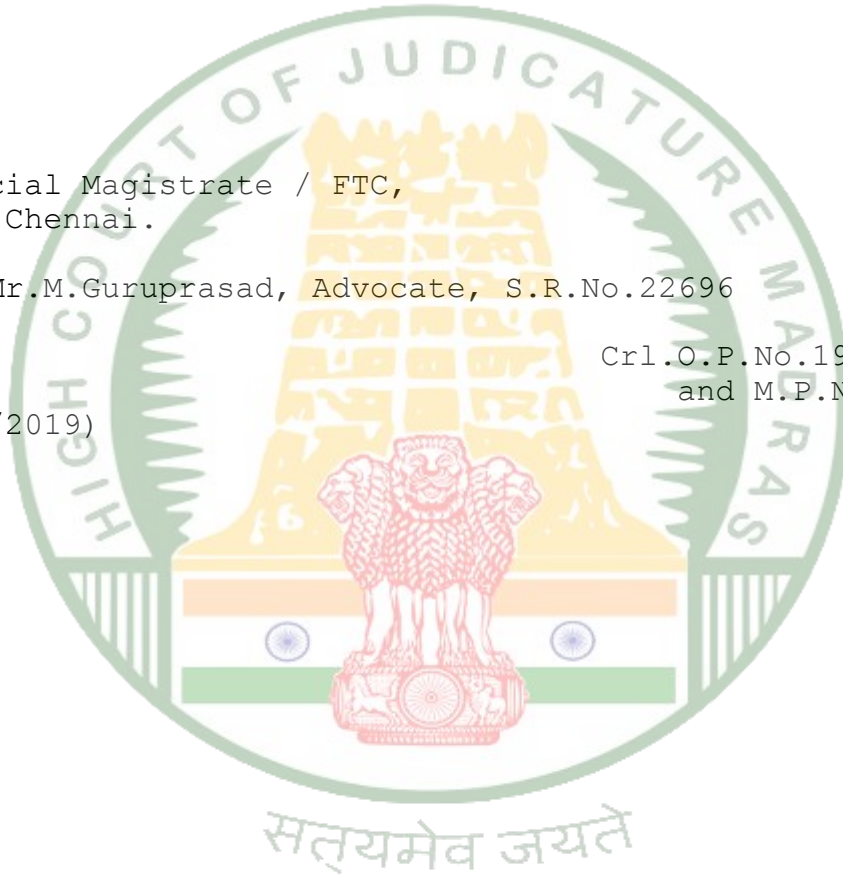
To

The Judicial Magistrate / FTC,
Alandur, Chennai.

+1 cc to Mr.M.Guruprasad, Advocate, S.R.No.22696

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SSM(05/04/2019)



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