IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL. O.P. No.28867 of 2017
and
CRL. MP. Nos. 16325 & 16326 of 2017

1.M/s. Statco Infraprojects Pvt. Ltd.
Represented by its Managing Director Mr. Manoj Kantibhai Sheth,
No.4/4, Ground Floor, Justice Ramanujam Street,
Malavya Avenue, Chennai - 600 041.

2. Rakesh Premkumar Sheth,
3. Mr. Manoj Kanti Bhai
4. Mrs. Hema Manoj Sheth,
5. Prabhakar Gali Deenadayalu ... Petitioners

-vs-

Narendra Properties Ltd. ... Respondent

Prayer:- Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the entire records relating to C.C. No.4929 of 2017 pending on the file of the XIV Metropolitan Magistrate, Egmore and quash the same.

For Petitioners : Mr. Nithyaesh Nataraj

For Respondent : Mr. Jayesh Dolia
For Aiyar and Dolia

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O R D E R

This petition has been filed to call for the records relating to C.C. No.4929 of 2017 on the file of the XIV Metropolitan Magistrate, Egmore, wherein a complaint has been registered against the petitioners for the offence under Sections 138 and 142 of the Negotiable Instruments Act, 1881. (in brevity "N.I. Act.")

2. Heard the learned Counsel for the petitioner and the learned counsel appearing for the respondents and perused the material on record.

3. According to the respondent, the petitioners have approached the respondent/complainant herein for a loan of Rs.1,00,00,000/- (Rupees One Crore Only) for the purpose of business transaction. The respondent/complainant, duly executing a promissory note for Rs.1,00,00,000/- (Rupees One Crore Only) with interest @18% p.a. till the date of payment, has transferred the aforesaid loan amount through RTGS on 01.08.2011 to the first petitioner herein. Out of Rs.1,00,00,000/- (Rupees One Crore Only), the first petitioner has made part payment of Rs.50,00,000/- (Rupees Fifty Lakhs only) in the year 2012. Hence, a fresh promissory note executed on 01.04.2013 for remaining amount of Rs.50,00,000/- (Rupees Fifty Lakhs only) in favour of the respondent company, viz., M/s.Narendra Properties Ltd., destroying the erstwhile promissory note dated 01.08.2011. The interest for the remaining loan amount payable to the respondent, has been paid till May, 2013 and thereafter, no payments were made by the petitioners. After consistent follow up and reminder to the petitioners, the first petitioner has issued a cheque bearing No.013588 dated 18.01.2016 for Rs.50,00,000/- (Rupees Fifty Lakhs only) drawn on Allahabad Bank, Adayar Branch, Chennai- 600 020 in favour of the respondent company/complainant. As per the instructions of the petitioners, the respondent company/complainant has presented the cheque in question through their Bankers viz., Bank of Baroda, Egmore Branch, Chennai - 600 008. The cheque was returned by the first petitioner's bankers on 02.03.2016 with the endorsement that "Payment stopped by the drawer". In view of the above, the respondent company/complainant issued statutory notice on 19.03.2016 calling upon the petitioners to make payment of the aforesaid amount. But, the petitioner has sent evasive reply notice to the respondent company on 13.06.2016. Thereafter, the respondent company/complainant has made complaint under Sections 190 and 200 Cr.P.C. for offence under Section 138, r/w 142 of the N.I. Act, against the petitioners in C.C. No.4929 of 2017 on the file of the XIV Metropolitan Magistrate, Egmore.

4. The learned counsel for the petitioners would submit that the cheque in question is not legally enforceable debt since the same has been issued for security purpose to the respondent company/complainant and the same was issued blank crossed Cheque by M/s.Karismaa MEP Services P Ltd., with signature during the year 2013. In the meantime, the aforesaid Company's name has been changed as M/s.Statco Infraprojects Pvt. Ltd. with effect from 19.03.2015 but, the cheque issued by M/s.Karismaa MEP Services P Ltd., was deposited on 18.01.2016 after the then company's name changed in the name of the first petitioner. i.e. 19.03.2015. Further, since the petitioner had already instructed stop payment to their Bankers on 08.09.2015, the alleged cheque being issued on 18.01.2016 does not arise.

Hence, the complaint for offence under Sections 138 r/w 142 of the N.I Act against the petitioners in C.C. No.4929 of 2017 on the file of the XIV Metropolitan Magistrate, Egmore is liable to be quashed.

5. The learned Counsel for the respondent company would submit that out of total Loan amount of Rs.1,00,000,000/- (Rupees One Crore Only), a part amount of Rs.50,00,000/- (Rupees Fifty Lakhs Only) was paid by the petitioners in the year 2012. Therefore, a fresh promissory note for Rs.50,00,000/-(Rupees Fifty Lakhs Only) has been made in favour of the respondent company on 01.04.2013. When the respondent company demanded the balance amount, the first petitioner has issued the alleged cheque against the repayment of the balance loan amount. The petitioners have failed to honour the cheque for a legally recoverable debt. Hence, the petitioners are liable to be convicted and sentenced under Sections 138, 142 of N.I Act.

6. On perusal of the records, it is seen that this Court by its order dated 21.12.2017, has granted interim stay of all further proceedings in C.C. No.4929 of 2017 pending on the file of XIV Metropolitan Magistrate, Egmore, after perusing the averments in the complaint made by the respondent company herein stating as follows:

> "From the averments in the complaint, it is seen that for the loan transaction that took place in the year 2011, it is seen that a cheque was issued as repayment on 18.01.2016, which is apparently after the period of limitation. It is further seen that a letter dated 08.09.2015 issued by the complainant herein, there is instruction for stop payment of the impugned cheque. I am unable to comprehend as to how the request letter for stop payment can be given on 08.09.2015 for the cheque issued on 08.01.2016. Since there was no legally enforceable debt made out in the complaint and the issuance of cheque itself is doubtful in view of the letter of the complainant dated 08.09.2015. In my view the petitioner has made out a prima facie case for grant of interim orders."

7. Further, on perusal of the averments in the affidavit, it is seen that the respondent company filed a suit in C.S. No.680 of 2017 against the petitioners for recovery of amount including interest is pending before this Court. Therefore, civil liability of the parties against each other can be looked into the aforesaid litigation. On seeing the offence under Section 138 of N.I. Act is made out or not against the petitioners, the entire transactions between the parties have been made in the year 2011, but the respondent company has deposited the cheque

in question on 18.01.2016 for repayment of the loan amount which is apparently after the period of limitation. At the same time, it is contradictory that the alleged cheque issued by M/s.Karismaa MEP Services Pvt. Ltd., was deposited in two times on 18.01.2016 and 02.03.2016 respectively in the respondent's company Bank account even after the aforesaid company's name has been changed as M/s.Statco Infraprojects Pvt. Ltd with effect from 19.03.2015 itself. If it is stated by the respondent company, that the cheque was issued on 18.01.2016, how a request letter of stop payment can be given in retrospective date. i.e. 08.09.2015.

8. In view of the aforesaid discussions and perusal of the entire records, it makes clear that the cheque in question was not issued against any legally enforceable liability.

9. In the result, the Criminal Original Petition shall stand allowed. Accordingly, the proceedings in C.C. No.4929 on the file of the XIV Metropolitan Magistrate, Egmore is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

lbm

To

1) The XIV Metropolitan Magistrate,
Egmore, Chennai.

+2 ccs to Mr.Nithyaash Natraj, Advocate, S.R.No.35158

+1 cc to M/s.Aiyar & Dolia, Advocate, S.R.No.35381

CRL. O.P. No.28867 of 2017
and
CRL. MP. Nos. 16325 & 16326 of 2017

CP(CO)
SSM(25/06/2019)