BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2019

CORAM :

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)Nos.1284, 1285, 2104 & 2105 of 2019
and
Crl.MP.(MD)Nos. 621, 622, 1103, 1104, 4147, 4148 & of 2019

1.Sri Chandra Moulishvar Spining Mills Private Limited,
424/4B Palladam-Tharapuram Road,
Rep by M.Ravichandran,
Elavanthi Vadugpalayam Pirivu,
V.Kallipalayam,
Palladam-641 664.

2.M.Ravichandran,
S/o.Mandrachalam,
Director of Sri Chandra Moulishvar
Spinning Mills Private Limited,
No.19, R.V.E Layout 5th Street,
Velan Nagar, Thennampalayam,
Thirupur-641 604.

3.R.Premalatha
W/o.Ravichandran,
Director of Sri Chandra Moulishvar
Spinning Mills Private Limited,
No.19, R.V.E Layout 5th Street,
Velan Nagar, Thennampalayam,
Thirupur-641 604. ... Petitioners/Accused
(In all Crl.OPs)

Vs.

Sri Narayana Traders,
Rep. By its Managing Partner,
K.Rishi Narayana Raja,
S/o.Konduraja,
No.261,Dharmapuram Street,
Rajapalayam-626 117. ...Complainant/ Respondent
(In all Crl.OPs)

Common Prayer: Criminal Original Petitions filed under section 482 of Criminal Procedure Code, to call for the records in pursuant to the C.C.Nos.126, 86, 199 & 100 of 2018 on the file of the learned Judicial Magistrate, Rajapalayam and quash the same.

For Petitioners : Mr.M.Karthikeya Venkttachalapathy
(In all Crl.OPs)

For Respondent : Mr.S.Suresh for
M/s.Aiyer & Dolia
(In all Crl.OPs)

COMMON ORDER

These petitions have been filed to quash the proceedings in C.C.Nos.126, 86, 199 & 100 of 2018 on the file of the learned Judicial Magistrate, Rajapalayam.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

3. The learned counsel for the petitioner submitted that the cheques were issued to the respondent company only for the purpose of security during the course of business transaction and the same were misused by the respondent. Based on the security cheques, the respondent lodged a complaint under Section 138 of the Negotiable Instruments Act in C.C.Nos.126, 86, 199 & 100 of 2018 before the learned Judicial Magistrate Court, Rajapalayam. Further, he submitted that the respondent issued notice dated 12.01.2018 invoking Rule 5 and Sub-rules (1) (a) and (b) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016) by relying upon the alleged invoice demanding payment. For which, the petitioners have given once, the right of the petitioner Company to deal with the assets and liability has been restricted as per the Section 85 (3) of the Code. Therefore, the continuation of the proceedings under Section 138 of the Negotiable Instruments Act arising out of the civil dispute regarding supply of substandard raw cotton has no legs to stand and the same is liable to be quashed.

4. He further submitted that the petitioners being the Directors of the Company, is not sufficient to make the persons liability under Section 141 of the Negotiable Instruments Act, since all the Directors are not having knowledge about the transactions between the petitioner as well as the complainant. It is seen that the respondent lodged a complaint as against the petitioners under Section 138 of the Negotiable Instruments Act, alleging that towards the purchase of goods from the defacto complainant, there is a liability on the petitioners. Towards the part payment of the liability the petitioners issued cheques. When the said cheques were presented for collection and all the cheques were returned as 'dis-honoured' for the reason of 'funds insufficient'. Thereafter, the respondent demanded the petitioners to pay exorbitant interest and proceeded with the present complaint under Section 138 of the Negotiable Instruments Act. The petitioners filed a insolvency petition and the same is pending. When the insolvency petition is pending, there is absolutely no bar to proceed under Section 138 of

the Negotiable Instruments Act. In which, it is relevant to rely upon the judgment in the case of **M/s.Nag Leathers Pvt Ltd Vs. Proprietorship Rep** in **Crl.O.P.No.14025 of 2017**, wherein held as follows:-

> *"10....(2) There is no prohibition either in the Insolvency Act or in the Negotiable Instruments Act for the complainant to approach the criminal Court to take penal action against the accused for the* *offence already committed under Section 138 of the Negotiable Instruments Act either bacause the insolvency proceedings are pending or even he was declared as an insolvent. The protection given under Sections 29 and 31 of the Provisional Insolvency Act is extended to the debtor in respect of civil detention and civil arrest alone. It would not cover the proceedings under Section 138 of the Negotiable Instruments Act. Therefore, on this ground also, this application has to be dismissed."*
>
> *11.This Court has held that there is no prohibition eithe in the Insolvency Act or in the Negotiable Instruments Act for the complainant to approach the criminal court to take penal action against the accused for the offence already committed under Section 138 of Negotiable Instruments Act either because the insolvency proceedings are pending or even he was declared as an insolvent. Therefore there is no bar to initiate proceedings under the criminal law against the debtor, though he was declared as insolvent. The bar has been extended only inrespect of civil detention and civil arrest. It would not cover the proceedings under Bankruptcy Code, 2016 "14 (1) a. The institution of the suits or continuation of the pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other* *authority.*
>
> *b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein.*
>
> *12.The Section 138 of Negotiable Instruments Act is a penal provision which empowers the court of competent jurisdiction to pass the order of imprisonment or fine. It is not the civil proceedings and even fine imposed by the criminal court cannot held to be a money claim or recovery against*

Corporate Debtor. It is seen from the above provision, the criminal proceedings is not covered under the prohibition and as such the petitioner cannot have a shelter under Section 14 of Insolvency and Bankruptcy Code. Therefore, the petition is devoid of merits and it is liable to be dismissed."

5. In view of the above discussion, this Court is not inclined to quash the charge sheets in C.C.Nos.126, 86, 199 & 100 of 2018. Hence, these Criminal Original Petitions are dismissed. However, the learned Judicial Magistrate, Rajapalayam, is directed to complete the entire trial proceedings in C.C.Nos.126, 86, 199 & 100 of 2018 within a period of six months from the date of receipt of a copy of this Order.

6. The personal appearance of the third petitioner alone is dispensed with and she shall be represented by a counsel after filing appropriate application. The third petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

dss

To

The Judicial Magistrate Court,
Rajapalayam.

+1CC TO MR.M.KARTHIKEYAN VENKITACHALAPATHY, Advocate
Sr. No. 94700

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and
Crl.MP.(MD)Nos. 621, 622, 1103, 1104, 4147, 4148 & of 2019
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TR(06.12.2019)4P 3C