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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.08.2019

Delivered on : 22.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.O.P.(MD).Nos.22815 and 22816 of 2018

and

Crl.M.P.(MD)Nos.10775, 10776, 10777 and 10778 of 2018

Vijayraj Surana,
Managing Director,
M/s.Surana Corporation Limited,
No.29, Whited Road, 2nd Floor,
Royapettah,
Chennai-600 014. : Petitioner in both Crl.O.Ps.

Versus

1.M/s.Bhima Jewellery,
A Partnership Firm,
Rep. by its Power of Attorney,
Internal Auditor,
Mr.G.Veeraputhiran,
No.37/5-2, Avvai Shanmugam Salai,
Meenakshipuram,
Nagercoil-629 001.

2.M/s.Surana Corporation Limited,
Represented through its Managing Director,
Mr.Vijayraj Surana,
No.29, Whites Road, 2nd Floor,
Royapettah,
Chennai-600 014.

3.Jegadish Gopal,
Director,
M/s.Surana Corporation Limited,
No.29, Whites Road, 2nd Floor,
Royapettah,
Chennai-600 014.

4.Devarajan Elayavalli Kanniyambakkam,
Additional Director,
M/s.Surana Corporation Limited,
No.29, Whites Road, 2nd Floor,
Royapettah,
Chennai-600 014. : Respondents in both Crl.O.Ps.

Prayer in Crl.O.P.(MD).No.22815 of 2018 : Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records pertaining to the case in S.T.C.No.546 of 2015 pending

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before the learned Judicial Magistrate No.I (Fast Track Court), Madurai and quash the same insofar as the petitioner/Accused No.2 is concerned.

Prayer in Crl.O.P.(MD).No.22816 of 2018 : Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records pertaining to the case in S.T.C.No.577 of 2015 pending before the learned Judicial Magistrate No.I (Fast Track Court), Madurai and quash the same insofar as the petitioner/Accused No.2 is concerned.

For Petitioner in both petitions	:	Mr.S.Sundaresan
For Respondent No.1 in both petitions	:	Mr.AR.L.Sundaresan, Senior Counsel, For Mr.Chamundi Bose

C O M M O N O R D E R

Both the Criminal Original Petitions have been filed to quash the private complaints filed under Section 138 of the Negotiable Instruments Act, 1881.

2. Since the petitioner and the respondents are one and the same, both the petitions have been heard together and disposed of by this common order.

3. The petitioner is the second accused in both the cases. The first respondent herein filed two private complaints, on the ground that, the first accused in this case, namely M/s.Surana Corporation Limited, is a Company, and the petitioner herein is the Managing Director of the first accused. The third accused is the Director and the fourth accused is the Additional Director of the first accused Company. The complainant is running Jewellery Shops under the name and style of "Bhima Jewellery" at Nagercoil, as well as at Madurai. The accused approached the complainant for supplying standard gold to them and on the assurance given by the accused, the complainant has paid an advance money to them. But, after receipt of the money, the accused have failed to supply the standard gold and as such, there was an outstanding advance amount of Rs.2,50,00,000/- [Rupees Two Crores and Fifty Lakhs only] to the Madurai Branch and Rs.2,50,00,000/- [Rupees Two Crores and Fifty Lakhs only] to Nagercoil Branch. In order to discharge the above liability, the accused issued two post-dated cheques dated 06.05.2015 drawn on Punjab National Bank, Chennai, bearing Cheque Nos.484148 and 484147. Subsequently, the complainant presented the cheques on the instructions given by the accused in Federal Bank, Madurai, on 03.08.2015. The same were returned by the Bank on the ground of "Funds Insufficient". Thereafter, the complainant issued a common statutory legal notice on 14.08.2015 to the accused, calling upon them to pay the amount. Though the accused received the notice, they did not send any reply and also failed to pay the amount. Hence, the

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two complaints have been filed before the learned Judicial Magistrate No.1, Madurai, and the learned Judicial Magistrate has taken cognizance of the offence and issued summons to the petitioner. Now, to quash the above complaints, the present petitions have been filed.

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4. The learned counsel appearing for the petitioner in both the petitions submitted that, the complainant is an unregistered Partnership Firm, and under Section 69(2) of the Indian Partnership Act, 1932, the complainant cannot maintain a private complaint on behalf of the unregistered Partnership Firm, and the complaints have been filed by a power of attorney without a proper authorization. According to the petitioner, there are two Partnership Firms, first by name M/s.Bhima Jewellery, running a Jewellery Shop at Nagercoil and another Jewellery Shop at Madurai run by another Partnership Firm called M/s.Bhima Jewellery, Madurai. Both the Firms are different entity. M/s.Bhima Jewellery, at Nagercoil, having five partners, out of which, two of them are Managing Partners, and as per Clauses 13 and 14 of the partnership deed, power has been given to both the Managing Partners to jointly initiate legal proceedings both civil and criminal Courts, and also appoint authorized representatives on behalf of the Firm. But, in the instant case, the power of attorney has been given only by one of the Managing Partners, to file the complaint. Hence, the power of attorney itself is not valid, based on the same, the complaint cannot be filed. That apart, the power of attorney did not say anything in the complaint that he has personal knowledge about the transaction between the complainant and the accused. Hence, he is not competent to file the complaint. That apart, there is no specific averment in the complaints that the petitioner is also in-charge of and responsible to the affairs of the first accused company and the petitioner cannot be made vicariously liable.

5. The learned counsel further submitted that there are two Partnership Firms running Jewellery Shops one at Nagercoil and another at Madurai. Both the cheques have been issued only to M/s.Bhima Jewellery at Nagercoil. Now, one of the the complaints has been filed by M/s.Bhima Jewellery, Madurai, before the learned Judicial Magistrate No.I, Madurai, based on the cheques issued in favour of M/s.Bhima Jewellery at Nagercoil. Hence, M/s.Bhima Jewellery, Madurai cannot maintain a complaint against the petitioner, as there is no legally enforceable liability against M/s.Bhima Jewellery Madurai and no cheque has been issued in favour of M/s.Bhima Jewellery Madurai.

6. The learned counsel appearing for the petitioner further submitted that now the first accused company underwent liquidation and insolvency proceedings have been taken against the company by the creditors of the company, hence, under Section 14 of the Insolvency and Bankruptcy Code, 2016, the Magistrate cannot proceed with the complaint, as an Insolvency Resolution Professional has already been appointed by the National Company Law Tribunal.

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7. In support of his contention, the learned counsel appearing for the petitioner relied upon the following judgments:

(i) Meters and Instruments (P) Ltd. v. Kanchan Mehta [2018(1) SCC 560].

(ii) Ashoke Mal Bafna vs. Upper India Steel Manufacturing & Engineering Co. Ltd. [2018(14) SCC 202].

(iii) Kalanithi Maran v. UOI and another [CDJ 2018 MHC 2663]

(iv) National Small Industries Corporation Limited v. Harmeet Singh Paintal & Another [2010 (3) SCC 330].

(v) K.K.Ahuja vs. V.K.Vora & Another [2009(10) SCC 48].

(vi) S.M.S.Pharmaceuticals Ltd., vs. Neeta Bhalla & Another [2007(4) SCC 70].

8. Per contra, Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the first respondent submitted that, both the Firms are registered Firms duly registered under the Indian Partnership Act, 1932, and also produced a xerox copy of the certificate of registration. The learned Senior Counsel also submitted that now, the trial in both the complaints has already commenced, after commencement of trial, the petitioner cannot maintain a petition to quash the criminal proceedings. The learned Senior Counsel further submitted that so far as the issuance of power of attorney is concerned, as per the partnership deed, anyone of the Managing Partners is empowered to initiate legal proceedings and give authorization, and it is not necessary that both the Managing Directors should give a joint authorization. That apart, the power of attorney has clearly stated that, he has personal knowledge about the transaction between the parties. In the sworn-in statement given before the Trial Court, he has clearly stated that he is fully aware of the transaction. Whether the power of attorney has a personal knowledge about the transaction, can be decided only during trial and at this stage, that issue cannot be decided. The petitioner herein is one of the Managing Directors of the first accused company, under Section 141 of the Negotiable Instruments Act, 1881, being a Managing Director, the petitioner is responsible for the day-to-day affairs of the company and he cannot escape from his liability. Furthermore, the petitioner has already filed applications in Crl.M.P.Nos.7914 and 10836 of 2016 before the Trial Court to delete himself as the Managing Director of the first accused company, on the ground that, he has already resigned from the company. That applications have been dismissed by the learned Trial Judge, by order dated 15.05.2017 and the order has also become final, now, it is not open to him to contend that he is not liable for the affairs of the company.

9. The learned Senior Counsel further contended that so far as the liability is concerned, it has been clearly mentioned in the complaints that the petitioner has legally enforceable liability with both the Firms and he has also issued two cheques for the Firms at Nagercoil, as well as at Madurai, and the cheques have been presented in the account maintained by both Firms at Madurai, and the complaints have been filed at Madurai. That apart, it is not the

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case of the petitioner that, liability is only in respect of M/s.Bhima Jewellery at Nagercoil, and the cheques have also been issued only to Nagercoil shop and not in respect of Madurai shop. At any rate, these are all matters for evidence. Whether there is any legally enforceable liability against the Madurai Firm, is a matter to be decided during trial and it cannot be decided in a quash petition. It is also contended that merely because the first accused company underwent liquidation and a proceedings has been initiated under Insolvency and Bankruptcy Code, 2016, the complaints cannot be quashed, and, absolutely, there is no material to substantiate the said contention. That apart, even assuming that now a proceedings has been initiated under the Code, it is not a bar to initiate a proceedings for the criminal liability.

10. I have considered the rival submissions and also perused the records carefully.

11. The primordial contention of the petitioner is that the complainant Firm is an unregistered Firm, and under Section 69(2) of the Indian Partnership Act, 1932, the unregistered Firm cannot maintain a complaint. But, the learned Senior Counsel appearing for the first respondent submitted that both the complainant Firms are registered Firms and also produced a xerox copy of the Registration Certificates. It shows that the Nagercoil firm has been registered on 23.09.2003 at Nagercoil and Madurai Firm has been registered on 12.06.2007 at Madurai. The learned counsel appearing for the petitioner disputed the said fact contending that only xerox copies of the registration certificates are produced before this Court. In the above circumstances, this Court is not in a position to decide the issue whether the Firms are registered or not. However, it is open to the petitioner to raise those issues during trial and it is for the complainant Firm to establish that both the Firms are registered Firms.

12. The learned counsel appearing for the petitioner, relying upon the judgment of the Hon'ble Supreme Court in **Meters and Instruments (P) Ltd. v. Kanchan Mehta [2018(1) SCC 560]**, contended that the offence under Section 138 of the Negotiable Instruments Act is primarily a civil wrong and the proceedings also compensatory in nature. In the above circumstances, the complainant, being an unregistered Firm, cannot maintain a complaint as per Section 69(2) of the Indian Partnership Act, 1932. But, the issue as to whether the complainant is a registered Firm or not, cannot be decided at this stage, and the above judgment is no way helpful to decide the issue, at this stage.

13. The next contention of the learned counsel appearing for the petitioner is that, there is no proper authorization by the Firms to file the complaints. According to the petitioner, as per the deeds of partnership, there are two Managing Partners for M/s.Bhima Jewellery at Nagercoil, and in respect of M/s.Bhima Jewellery Madurai, there are three Managing Partners, and

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authorization should be given by all the Managing Partners. Whereas, the present authorizations have been given only by one of the Managing Partners, and it cannot be construed as a valid authorization, based on that, the complaints cannot be filed by the power of attorney.

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14. In respect of M/s.Bhima Jewellery at Nagercoil, there are two Managing Partners and in respect of M/s.Bhima Jewellery Madurai, there are three Managing Partners. The relevant portion of Clause 13 of the partnership deed executed on 01.04.2006 relating to M/s.Bhima Jewellery at Nagercoil, reads as follows:

> **"The party of the First Part viz., Sri.B.Govindan and party of the Third Part viz., Sri Sudhir Kapoor <u>shall be the Managing Partners and as such, they shall have the</u> following powers:**
>
> **(a) to sign and/or verify plaints and/or application to be presented before the appropriate Courts, Tribunal or other Public Authorities.**
>
> **(b) To initiate legal proceedings in Civil and Criminal Courts whenever found necessary to continue and conduct pending cases and execute decrees joining as additional plaintiffs or defendants, in the place of the partners already left, if necessary.**
>
> **(c) To appoint Advocates, Pleaders, Authorised Representatives, Attorneys or Agents and to act in such proceedings.**
>
> **(d) To enter into agreements on behalf of the firm with the Managers for the conduct of the business and also to give them Powers of Attorney."**

15. Likewise, Clause 13 of the partnership deed executed on 07.06.2007 relating to M/s.Bhima Jewellery Madurai, reads as follows:

> **"The parties of the First Part viz., Sri.B.Govindan, Second Part viz., Mrs.Jayalakshmi Govindan and Third Part viz., Sri Sudhir Kapoor shall be <u>the Managing Partners and as such, they shall have the</u> following powers:**
>
> **(a) to sign and/or verify plaints and/or application to be presented before the appropriate Courts, Tribunal or other Public Authorities.**
>
> **(b) To initiate legal proceedings in Civil and Criminal Courts whenever found necessary, to continue and conduct pending cases and execute decrees joining as additional plaintiffs or defendants, in the place of the partners already left, if necessary.**
>
> **(c) To appoint Advocates, Pleaders, Authorised Representatives, Attorneys or Agents and to act in such proceedings.**
>
> **(d) To enter into agreements on behalf of the firm**

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with the Managers for the conduct of the business and also to give them Powers of Attorney."

16. From a perusal of the deeds of partnerships, more particularly, Clause 13, it could be seen that, the Managing Partners shall have the powers to initiate legal proceedings and also appoint authorized representatives. As per the above clause, all the Managing Partners have given power, and there is no specific clause in the partnership deeds that all the Managing Partners should jointly initiate legal proceedings and appoint authorized representatives. As per the deeds, both the Managing Partners are empowered to initiate legal proceedings and appoint authorized representatives. In the absence of any such restriction, I am of the considered view that it is sufficient that anyone of the Managing Partners can give authorization. Hence, the contention of the learned counsel appearing for the petitioner, in this regard, cannot be countenanced.

17. Admittedly, both the complaints have been filed through a power of attorney, by name G.Veeraputhiran, who was the Internal Auditor of the complainant Firms. Now, the contention of the petitioner is that, the power of attorney did not spell out whether he has any personal knowledge about the transaction between the parties and in the absence of any personal knowledge, he is not competent to file the complaint. It is a settled law that a power of attorney holder can file a complaint, appear and depose for the purpose of issuance of process for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The only restriction is that the power of attorney should have a personal knowledge about the transaction between the parties, and in the absence of any personal knowledge, he cannot depose. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court in **A.C.Narayanan v. State of Maharashtra and another** reported in **2014(1) LW 698**, wherein, at Paragraph No.26, it has been held as follows:

"26....... **We clarify the position and answer the questions in the following manner:**

(i) Filing of complaint petition under Section 138 of N.I. Act through power of attorney is perfectly legal and competent.

(ii) The Power of Attorney holder can depose and verify on oath before the Court in order to prove the contents of the complaint. However, the power of attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions.

(iii) It is required by the complainant to make specific assertion as to the knowledge of the power of attorney holder in the said transaction explicitly in the complaint and the power of attorney holder who has no knowledge regarding the transactions cannot be examined

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as a witness in the case.

(iv) In the light of section 145 of N.I.Act, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the N.I.Act and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the Court, nor to examine the complainant of his witness upon oath for taking the decision whether or not to issue process on the complaint under Section 138 of the N.I. Act.

(v) The functions under the general power of attorney cannot be delegated to another person without specific clause permitting the same in the power of attorney. Nevertheless, the general power of attorney itself can be cancelled and be given to another person."

18. In the instant case, the complainant was an Internal Auditor of the complainant Firms. That apart, he said to have filed an affidavit along with the complaints stating that he has personal knowledge about the transaction between the complainant and the accused. After considering all those materials, the learned Magistrate has now taken cognizance of the offence and also issued summons. Whether the power of attorney has any personal knowledge regarding the transaction between the parties, can be ascertained only during the trial. At the stage of taking cognizance and issuing process, the learned Magistrate can go only by the contents of the complaint and also the sworn-in statement or the affidavit filed by the power of attorney along with the complaint. Now, based on those materials, cognizance has been taken and summons issued. Whether the power of attorney has personal knowledge about the transaction, and he is competent to depose, is a matter to be considered at the time of trial. On that ground, the complaints cannot be quashed at this stage.

19. The next serious contention raised by the learned counsel appearing for the petitioner is that, there are two separate partnership Firms. The Jewellery shop at Nagercoil is being run by the Partnership Firm, viz., M/s.Bhima Jewellery. Whereas, Madurai Jewellery Shop is being run by M/s.Bhima Jewellery Madurai. Both the cheques have been issued in favour of M/s.Bhima Jewellery, Nagercoil and there is no legally enforceable liability against M/s.Bhima Jewellery Madurai. Now, using the cheques issued in favour of M/s.Bhima Jewellery at Nagercoil, Madurai Firm cannot maintain the complaint.

20. Per contra, the learned Senior Counsel appearing for the first respondent contended that the petitioner has the liability in respect of both the Firms, only in order to discharge that liability, he has issued two cheques one in favour of the Nagercoil firm and another in favour of Madurai firm. Both the cheques have been presented at Madurai, where the account was maintained by the complainant. But, the cheques have been returned on the ground of

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"funds insufficient". The complaints also clearly disclose the outstanding liability against both the Firms. Whether there is any legally enforceable liability, against the Madurai firm, can be decided during trial, that issue cannot be decided at this stage.

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21. So far as the liability of the petitioner is concerned, from the perusal of both the complaints, it could be seen that, there is an outstanding advance amount of Rs.2,50,00,000/- [Rupees Two Crores and Fifty Lakhs only] to the Madurai Branch and also Rs.2,50,00,000/- [Rupees Two Crores and Fifty Lakhs only] to Nagercoil Branch. In order to discharge those liability, the accused have given two cheques and the cheques have been presented before the bank as per the instructions of the accused and the same were returned. Now, issuance of cheques is not disputed by the accused. Whether there is any legally enforceable liability against M/s.Bhima Jewellery Madurai, and whether the cheques have been intended only to M/s.Bhima Jewellery, Nagercoil, are matters to be proved in trial. As it is a disputed question of fact, that cannot be decided in quash proceedings. Hence, this contention of the learned counsel appearing for the petitioner also cannot be accepted at this stage. It is open to the petitioner to establish that there is no liability against M/s.Bhima Jewellery Madurai, and the cheques have been issued only to M/s.Bhima Jewellery at Nagercoil, during trial.

22. The next contention of the learned counsel appearing for the petitioner is that, there is no specific averment in the complaints that the petitioner being a Managing Director, he is also responsible for the day-to-day affairs of the company, and the complainant cannot maintain a complaint against the petitioner, It is settled law that the petitioner, being the Managing Director of the first accused company by virtue of his position, he is responsible to the affairs of the company. There is no necessary to make any specific averment in the complaint.

23. In **National Small Industries Corporation Limited v. Harmeet Singh Paintal & Another [2010 (3) SCC 330]**, the Hon'ble Supreme Court has clearly held that if the accused is the Managing Director or Joint Managing Director, then it is not necessary to make specific averment in the complaint and by virtue of their position, they are liable to be proceeded with. The relevant portion of the judgment reads as follows:

> **"25(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.**
>
> **(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.**

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(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make accused therein vicariously liable for offence committed by company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

(v) <u>If accused is Managing Director or Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.</u>

(vi) If accused is a Director or an Officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in complaint.

(vii) The person sought to be made liable should be in-charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases."

[Emphasis supplied]

24. The learned counsel appearing for the petitioner, relying upon the judgments in **Ashoke Mal Bafna vs. Upper India Steel Manufacturing & Engineering Co. Ltd. [2018(14) SCC 202], K.K.Ahuja vs. V.K.Vora & Another [2009(10) SCC 48]**, and **S.M.S.Pharmaceuticals Ltd., vs. Neeta Bhalla & Another [2007(4) SCC 70]**, contended that in the absence of any specific averment in the complaint that the petitioner was in-charge of, responsible to the affairs of the company and conduct of its business, the complaint is not maintainable. Admittedly, the petitioner is the Managing Director of the Company and he was at the helm of affairs of the company and he is responsible for the affairs of the company, and he cannot escape from his liability. Therefore, the above said judgments are not helpful to the facts of the present case.

25. That apart, the petitioner earlier filed petitions before the Trial Court to discharge him from the criminal proceedings on the ground that he has resigned from the company, and no liability can be fixed on him. But, those petitions have been dismissed by the Trial Court. Now, it is not open to him to contend that he is no way responsible for the affairs of the company.

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26. The learned counsel appearing for the petitioner further contended that, the first accused company now underwent a

liquidation and a proceedings under Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as 'the Code'] is pending against the company, the Adjudicating Authority also passed an order declaring moratorium for prohibiting the institution of suits or other proceedings against the company under Section 14 of the Code. Hence, the complainant cannot maintain a complaint under Section 138 of the Negotiable Instruments Act, 1881, against the petitioner.

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27. For considering the above submission, it is useful to refer to Section 14 of the Code, which reads as follows:

> **"14.Moratorium.- (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following namely:-**
>
> **(a) the institution of suits or continuation of 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 of any legal right or beneficial interest therein;**
>
> **(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);**
>
> **(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."**

28. On a careful reading of the aforesaid provision, it could be seen that, the Adjudicating Authority shall by an order declare moratorium for prohibiting the institution of suits or continuation of 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. Section 14(1)(a) of the Code precisely restricts its operation only in respect of civil proceedings. The expression 'suit or other proceedings' cannot be interpreted so liberally so as to include the criminal proceedings initiated for an offence under Section 138 of the Negotiable Instruments Act, 1881. The offence under Section 138 no way relates to the institution of proceedings under the Code, and any order passed under Section 14 cannot have any effect, on the proceedings under Section 138 of the Negotiable Instruments Act, 1881.

29. A Division Bench of Bombay High Court, while considering an analogous provision, in Section 446(1) of the Companies Act, in **Indorama Synthetics (I) Ltd., Nagpur vs. State of**

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Maharashtra and others reported in **2016(4) Mh.L.J. 249,** has held as follows:

> **"31. After taking note of all these decisions and, especially, relying on the decision of the Apex Court in the case of S.V.Kondaskar (supra), it was held by learned Single Judge of this Court [Coram : F.I. Rebello, J.] in the matter of Firth (India) (Supra), that the expression "legal proceedings" or "other legal proceedings" for the purpose of sections 442 and 446 must be read ejusdem generis with the expression 'suit' and can mean only civil proceedings which have a bearing in so far as the winding-up is concerned, namely, realization of the assets and discharge of liabilities of the Company. Hence, the proceedings under section 138 of N.I. Act, which are in the nature of a criminal complaint and not directly against the assets of the Company, cannot be included in the terms "suit or other legal proceedings", as used in section 446(1) of the Companies Act."**

30. Following the aforesaid judgment, a learned Single Judge of Bombay High Court, while considering a similar issue, in **Tayal Cotton Pvt. Ltd., Aurangabad vs. State of Maharashtra** reported in **2019(1) Mh.L.J. 312,** has held as follows:

> **"12. As can be seen from Clause (a) of sub-section (1) of section 14 of the Code, once the adjudicating authority declares moratorium for prohibiting institution of suits or continuation of pending suits or proceeding against the corporate debtor including execution of any judgment, decree or order in any Court of law, Arbitration Tribunal or other authority, the whole emphasis of the arguments of the learned advocate for the respondents 2 to 7 is on the words 'proceedings', 'order' and 'in any Court of law'. It has been submitted that these words do not precisely restrict its operation to only civil proceedings. The words are omnibus and even include a criminal proceeding including the one under section 138 of the N.I. Act and a criminal revision arising therefrom.**
>
> **13. As is the principle of interpretation of Statues, these words would take colour from words preceding thereto. These words will have to be interpreted ejusdem generis with the words 'suits' used earlier thereto. So interpreted, the word 'proceedings' used therein and even the words 'order' and 'in Court of law' will have to be interpreted as a proceeding arising in the nature of a suit and orders passed in such proceedings and suits. Apart from the fact that the Legislature has not conspicuously used the words**

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'criminal' as an adjective to the word 'proceedings' and as an adjective to the noun 'Court of law', it must be assumed that the Legislature in its wisdom has consciously omitted to use such adjectives since it must have intended to prohibit only the suits and execution of the judgments and decrees or a proceeding of the like nature. Therefore, applying this principle of interpretation, one cannot put any other interpretation on this provision contained in section 14 of the Code except that it only prohibits a suit or a proceeding of a like nature and does not include any criminal proceeding."

31. In the above circumstances, the proceedings initiated under Section 14 of the Code noway affects the continuation of the criminal proceedings under Section 138 of the Negotiable Instruments Act, 1881.

32. So far as the judgment relied upon by the petitioner reported in **Kalanithi Maran v. UOI and another [CDJ 2018 MHC 2663]** is concerned, it is a case where the Hon'ble Supreme Court has held that if the complaint or First Information Report or charge sheet filed after investigation, did not make out any *prima facie* case against the accused, the criminal proceedings can be quashed. But, in the instant case, as already held, a *prima facie* case is made out against the petitioner. That judgment is not applicable to the instant case.

33. Considering the above circumstances, I find no merit in the contentions of the learned counsel appearing for the petitioner. Hence, both the Criminal Original Petitions are liable to be dismissed and accordingly, dismissed. However, as the trial in both the complaints has already commenced and considering the fact that the matter is pending from the year 2015, the learned Judicial Magistrate No.I (Fast Track Court), Madurai, is directed to proceed with the trial and complete the same, within a period of three months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Judicial Magistrate No.I
(Fast Track Court),
Madurai.

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+2 CC to Mr.S.S SUNDARAESAN, Advocate SR-82937,82938

Common Order made in
Crl.O.P.(MD).Nos.22815 and 22816 of 2018
22.08.2019

sml
MK (30.08.2019) 14P 4C