IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.7037 of 2020
and
Crl.M.P.Nos.3821 & 3822 of of 2020

1. M/s. Land Marvel Homes,
   Rep. by Managing Partners & Partners,
   No.1, L.B. Road,
   Adyar, Chennai - 600 020.

2. M.Veerashekar,
   Managing Partner,
   M/s. Land Marvel Homes,
   Old No.6, New No.5,
   Indira Nagar, 3rd Main Road,
   Thiruvanmiyur,
   Chennai - 600 041.

3. M.Pananiappan
   Partner, M/s. Land Marvel Homes,
   Old No.6, New No.5,
   Indira Nagar, 3rd Main Road,
   Thiruvanmiyur,
   Chennai - 600 041.

4. M.Arivalagan,
   Partner, M/s. Land Marvel Homes,
   No.9, Kalashetra Road,
   S-1, Flat - II Floor,
   Land Marvel Flat,
   Thiruvanmiyur,
   Chennai - 600 041.

5. Vinayagaraj,
   Partner, M/s. Land Marvel Homes,
   No.2, Sriram Nagar, I Street,
   S1 II Floor, Land Marvel Flat,
   Thiruvanmiyur,
   Chennai - 600 041. ...Petitioners/Accused

Vs.

D.Ashok Kumar,
S/o. Das,
No.50-, L.B. Road, C/3,
Anand Aprtment,
Thiruvanmiyur,
Chennai - 600 041. ...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records of the proceeding in C.C.No.1787 of 2019 on the file of the Metropolitan Magistrate Court, FTC-III, Saidapet, Chennai and quash the same against the petitioners.

For Petitioners : Ms.Inthu Karunakaran

For Respondent : Mr.P.G.Thiyagu

ORDER

This petition has been filed to quash the proceeding in C.C. No.1787 of 2019 on the file of the Metropolitan Magistrate Court, FTC-III, Saidapet, Chennai, thereby taken cognizance for the offences under Sections 138 r/w 141 of Negotiable Instruments Act (herein after referred to as NI Act), as against the petitioners.

2. The learned counsel appearing for the petitioners would submit that the petitioners are accused in the complaint lodged by the respondent herein for the offences under Sections 138 r/w 141 of NI Act. The respondent is a stranger to the petitioners and the petitioners never borrowed any money from the respondent as alleged in the complaint. The respondent did not file any proof to show that the petitioners have borrowed the alleged amount by executing any agreement, promissory note etc. She further submitted that the alleged cheque is a non-CTS cheque and it is not circulated and the last session for non-CTS cheque was carried out only in December, 2018. From 01.01.2019, the non-CTS cheques are dispensed with as per the guide lines issued by the Reserve Bank of India. Therefore, the alleged cheque ought not to have issued by the petitioners in the year 2019.

2.1. The learned counsel appearing for the petitioners further submitted that according to the respondent the alleged cheque was issued by the petitioners on 04.02.2019 and the same was presented for collection. The said cheque was returned dishonour for the reason that insufficient funds by the return memo dated 12.02.2019. Whereas, the petitioners received communication from their bankers viz., the Indian Bank, East R.A.Puram Branch, Chennai, dated 23.07.2019, stating that the return memo for the alleged cheque was not issued by their banker. Further it is stated that the alleged cheque was presented for collection from their end and the said cheque was rejected and not presented to the Reserved Bank of India for clearance, for the reason that the cheque was a non-CTS one and last session was carried out in

December, 2018 and from January, 2019 non-CTS cheque is dispensed with. Therefore, the respondent fabricated the return memo as if the alleged cheque was presented for collection and returned for the reason that funds insufficient.

2.2. She also submitted that as far as the petitioners 2 to 5 are concerned, the offence under Section 141 of NI Act did not attract, since there is absolutely no specific averments made in the complaint as against them. In support of her contention, she relied upon the judgement reported in (2007) 5 SCC 103 in the case Raghu Lakshminarayanan Vs. M/s. Fine Tubes, wherein the Hon'ble Supreme Court of India held as a juristic person can be a company within the meaning of the provisions of the Companies Act, 1956 or a particular within the meaning of the provisions of the Indian Partnership Act, 1932 or an accosication of persons which ordinarily would mean a body of persons which is not incorporated under any statute. Company in terms of the explanation appended to Sections 141 of the NI Act means anybody-corporate and includes a firm or other association of individuals. Therefore, making of all the partners as accused for the cheque allegedly issued by the partnership firm is illegal and liable to be quashed. Therefore, she sought for quashment of the entire proceedings as against the petitioners.

3. Per contra, the learned counsel appearing for the respondent filed counter and submitted that the first accused firm is involved in promotion of land and the second petitioner is the Managing Director-cum-partner and rest of them are other partners. All the petitioners have personal knowledge about the transaction between the first accused partnership firm and the respondent herein and also well acquainted with the respondent. They borrowed a sum of Rs.15,00,000/- to develop their business. In the said transaction all the partners had personal knowledge and they decided to borrow the said sum for which all of them acquainted with the respondent herein. He further submitted that there are specific averments made as against each one of the petitioners 2 to 5 as such all the partners of the first accused firm have vicarious liability under Section 141 of NI Act.

3.1. Insofar as the other grounds raised by the learned counsel appearing for the petitioners that the alleged cheque dated 04.02.2019, is a non-CTS cheque and the same was never presented for collection and the return memo filed along with the complaint is a fabricated one are mixed question of facts and it has to be tested before the trial Court. He further submitted that the petitioners took the contentions that the cheque was not presented for collection and the said cheque was not reached the payers bank viz., Karur Vysya Bank, Adyar Branch, on the basis of the communication dated 19.07.2019 issued by their bankers. The communication has to be tested before the trial Court, since already the respondent filed return memo dated 12.02.2019 and the same is on record of Court. Therefore, all the points raised by the petitioners cannot be considered by this quash petition under Section 482 of Cr.P.C. Therefore he sought for dismissal of the quash petition.

4. Heard Ms.Inthu Karunakaran, learned counsel appearing for the petitioners and Mr.P.G.Thiyagu, learned counsel appearing for the respondent.

5. The petitioners are arrayed as A1 to A5 in the complaint lodged by the respondent herein for the offence under Section 138 of NI Act. According to the respondent, the first accused firm is involved in flat promotion business and it is represented by its Managing Director i.e., the second petitioner herein and other petitioners 3 to 5 are the partners of the first accused firm. All the partners are well acquaintance with the respondent and they borrowed a sum of Rs.15,00,000/- for their business development. After borrowal of the said amount all the accused persons promised to return the amount on behalf of the partnership firm viz., the first accused herein. After repeated request of the respondent, all the accused persons have issued cheque for a sum of Rs.15,00,000 dated 04.02.2019 towards discharge of their liability. When the cheque was presented for collection, the same was returned dishonoured for the reason funds insufficient, by the return memo dated 12.02.2019. After causing statutory notice to the accused persons, the respondent initiated proceedings for the offences under Sections 138 and 141 of NI Act.

6. The learned counsel appearing for the petitioners raised two grounds in which, the first one is that the cheque was never issued by the petitioners that too it was non-CTS cheque and the non-CTS cheques were dispensed by the Reserve Bank of India from January, 2019. Further the communication dated 23.07.2019 issued by their banker viz., Indian Bank, ERA Puram Branch, states as follows :-

> "Sub :- Clarification for cheque No.873732, drawn on Karur Vysya Bank
>
> With reference to the above subject, we would like to clarify that the above mentioned cheque No.873732, favouring D Ahok Kumar was presented for clearing from our end to our Hub branch Mylapore, on 06.02.2019. Subsequently, the cheque No.873732, was rejected and not presented to RBI for clearance because the said cheque was a NON-CTS one and last session for NON-CTS cheque was carried out in December, 2018. From

January, 2019 NON-CTS session is dispensed with.

Since the cheque has been rejected, due to expiry of NON-CTS session, there is no question of returning the cheque for the reason Insufficient Funds. So we are clarifying that, we have not issued any return memo for cheque no-873732"

7. On perusal of the documents produced along with the complaint, the respondent annexed return memo dated 12.02.2019, which was issued by their bank stating that the cheque was returned dishonour for the reason funds insufficient. It was produced before the trial Court while taking sworn statement of the respondent and the complaint had been taken cognizance by the trial Court on 26.03.2019. Thereafter on 23.07.2019, the petitioners obtained letter from the same bank with the above said contention. Therefore, there are two documents produced by the petitioners as well as the respondent and those documents cannot be tested by this Court that too under Section 482 of Cr.P.C. Both documents have to be tested before the trial Court by let in evidence.

8. The next ground raised by the learned counsel appearing for the petitioners is that there is no specific allegations as against the petitioners 2 to 5 to attract the offence under Section 141 of NI Act. The alleged cheque was signed by the Managing Director viz., the second petitioner herein and other petitioners 3 to 5 are the partners of the first accused firm. On perusal of the complaint the respondent categorically averred that the second petitioner is the Managing Director of the first accused firm and other petitioners 3 to 5 are other partners of the first accused partnership firm. All the accused persons are well acquaintance with the respondent and using the acquaintance with respondent, they borrowed a sum of Rs.15,00,000/- for their business development. All the accused also promised that they will return back the entire amount. With the acquaintance of all the accused, they issued cheque on behalf of the first accused firm signed by the the second accused viz., the Managing Director of the first accused firm, to the respondent herein. Therefore, there are specific averments implicating all the accused persons as accused to attract the vicarious liability on behalf of the first accused firm under Section 141 of NI Act. Therefore, the judgment cited by the learned counsel appearing for the petitioners would not helpful to the case of the petitioners. All the grounds raised by the learned counsel appearing for the petitioners cannot be considered by this Court and the same can be considered only by the trial Court during trial.

9. In view of the above discussion, this Criminal Original Petition stands dismissed. Consequently, connected

miscellaneous petitions are closed.

s/d
Assistant Registrar

True Copy

Sub-Assistant Registrar

rts

To

1.Metropolitan Magistrate Court,
FTC-III,
Saidapet,
Chennai.

2.The Chief Metropolitan Court,
Saidapet,
Chennai.

+cc to Mr.P.G.Thiyagu, Advocate, SR.No.27608

CRL.O.P.No.7037 of 2020
and
Crl.M.P.Nos.3821 & 3822 of 2020

PP(CO)
RN(27/11/2020)