IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2020

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.20109 of 2014 and
Crl.M.P.No.1 of 2014

1.V.P.Rajini Reddy
2.Karanjit Singh Jasuja ... Petitioners

Vs.

M/s.State Bank of Mauritius Ltd.,
22A, Cathedral Road,
Chennai - 600 086,
Rep. by its Manager,
Mr.C.Chandrasekaran ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in C.C.No.161 of 2013 on the file of the Judicial Magistrate FTC Alandur, Chennai and quash the same and so far as the petitioners are concerned.

For Petitioners : M/s.A.Ganesan

For Respondent : M/s.P.Elayarajkumar for
M/s.Ramalingam & Associates

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.161 of 2013, pending on the file of the Judicial Magistrate FTC, Alandur.

2.The petitioners are the 5th and 6th accused. The 1st accused is a company managed by the Board of Directors and day to day affairs being managed by the accused No.2 to 6. When the respondent was working as Manager in State Bank of Mauritius Limited, Cathedral Road, Chennai, the 1st accused has opened an account in his bank and he sanctioned various loans, credit facilities to the 1st accused for a sum of Rs.20.82 Crores and thereafter, the 1st accused company managed by the Board of Directors/2nd to 6th accused have failed to comply with the various terms and conditions of the loan. As on 30.05.2013, the dues of the accused under the said facility was Rs.21,76,96,908.19/-. The 2nd and 3rd accused in their capacity as Managing Directors and authorized signatory of the 1st accused company, had issued a cheque bearing No.118301 for a sum of Rs.1,27,79,733.22/- from the account held in Axis Bank, Thiruvanmiyur, Chennai towards interest as part of servicing the loan availed from the respondent Bank. When the said cheque was presented for collection on 03.07.2013, the same was returned with an endorsement "Funds Insufficient" on 04.07.2013. After knowledge of the dishonour of cheque, the respondent issued a statutory notice on 01.08.2013 to the accused. On receipt of the legal notice, the accused has not paid the cheque amount to the respondent Bank and the time for repayment was expired on 18.09.2013. In keeping with the provisions of Section 138 and 141 of the Negotiable Instruments Act, the respondent preferred a complaint. Challenging the same, the present petition has been filed by the petitioners/A5 and A6.

3.The learned counsel for the petitioners/A5 and A6 would submit that the 1st accused company committed default in repayment of dues and interest and therefore, the respondent bank on 31.05.2013 declared the account as 'Non Performance Asset'. He would further submit that the respondent has filed an application for recovery of Rs.23,16,69,645.65/- in O.A.No.347 of 2013 before the Debt Recovery Tribunal-II, Chennai against the 1st accused and others. The respondent Bank had filled the undated blank cheque for a sum of Rs.1,27,79,733.32/- of the accused company, which was given for security at the time of availing the loan and presented the same on 03.07.2013 and returned on 04.07.2013.

4.The learned counsel for the petitioners would further submit that the petitioners are neither signatories to undated blank cheque nor the guarantor of the loan and they are not responsible for the day to day affairs of the 1st accused company. Only persons who can be said to be connected with the commission of a crime at the relevant time have been subject to action. In support of his contention, the learned counsel for the petitioners relied upon the decision of the Hon'ble Supreme Court in the case of S.M.S.Pharmaceuticals Ltd., Versus Neeta Bhalla and another reported in (2005) 8 Supreme Court Cases 89, in which it has been held that "It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied."

5.Per contra, the learned counsel for the respondent would submit that all the accused are in-charge of the day-to-day affairs of the 1st accused company. He would further submit that the respondent sanctioned loan to the 1st accused company to the tune of Rs.20.82 Crores. As on 30.05.2013, the dues of the accused under the said facility was Rs.21,76,96,908.19/-, for which the 2nd and 3rd accused in their capacity as Managing Directors and authorized signatory of the 1st accused company, had issued a cheque bearing No.118301 for a sum of Rs.1,27,79,733.22/-. When presented for payment by the respondent, the same was returned unpaid with an endorsement "funds insufficient". That apart, the learned counsel would submit that the issue that has been raised by the petitioners cannot be decided in this petition and this Court cannot get into the factual aspect in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure.

6.On perusal of the records, it is seen that the respondent issued a sanction letter in respect of Term Loan Facility on 03.01.2012 and Sanction letter for rescheduling the existing term loan on 17.12.2012 and the 1st accused executed the Term Loan Agreement and other loan related agreements on 06.01.2012 and 02.01.2013 and the other accused executed an Agreement of Guarantee dated 06.01.2012 and Deed of Guarantee dated 02.01.2013. The accused committed default in repayment of dues and the interests and other moneys and the respondent bank as on 31.05.2013 declared the 1st accused loan account as Non Performing Asset. While being so, this Court cannot place reliance on the decision laid down by the Hon'ble Supreme Court in the case of S.M.S.Pharmaceuticals Ltd., Versus Neeta Bhalla and another reported in (2005) 8 Supreme Court Cases 89 referred by the learned counsel for the petitioners that the petitioners has not participated in the day-to-day affairs of the 1st accused company and it is not applicable to the present case.

7.The other points which have been raised by the learned counsel for the petitioners are to be taken only during the trial. Therefore, this Court does not any want to interfere that the proceedings before the Court below, at this stage.

8.The learned counsel for the petitioners requested this Court to dispense with the appearance of the petitioners before the trial Court on the ground that there are arguable points available with the petitioners before the National Company Law Tribunal Bench, Chennai based on the order dated 30.09.2019. In the facts and circumstances of the case, the appearance of the petitioner before the Trial Court is dispensed with. However, this order will not stand on the way of the Trial Court to insist for the appearance of the petitioners for receiving copies under Section 207 of Cr.P.C., framing of charges, questioning under Section 313 of Cr.P.C. and judgment and as and when the Trial Court feels it necessary.

9.It is left open to the petitioners to raise all the grounds before the Court below and the Court below shall considering the same on its own merits and in accordance with law.

10.In the result, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate FTC Alandur,
Chennai.

+2cc to M/s.Ramalingam & Associates, Advocate sr.10569

Crl.O.P.No.20109 of 2014

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nr 06/03/2020