

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.08.2020
Pronounced on : 04.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.17805 of 2014
and
M.P.No.1 & 2 of 2014

C.Gopal
S/o.Chinnaswamy Naidu, ... Petitioner

Versus

1.T.Gunasekaran,
S/o.Thangavel Udaiyar

2.M/s.Millgrain Machiners (P) Ltd.,
No.14, New SIDCO Industries Estate,
Near Sri Nagar,
Hosur 635 109,
Krishnagiri District,
Tamil Nadu.

3.V.Kumar, C.E.O
S/o.Vinayagam

4.V.Jayanthi,
D/o.Vinayagam

5.K.Gopinath
S/o.A.KRishnan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in S.T.C.No.39 of 2013 on the file of the Judicial Magistrate, Kallakurichi and quash the same in so far as the petitioner/second accused is concerned.

For Petitioner : Mr.I.C.Vasudevan

For R1 : Mr.Y.Arul Manickam

O R D E R

The petitioner, who is an second accused in S.T.C.No.39 of 2013 for the offence under Section 138 of Negotiable Instruments Act r/w 420 I.P.C and Section 357 of Cr.P.C on the file of the Judicial Magistrate, Kallakurichi, has filed this quash petition.

2. The gist of the case is that the first respondent/complainant is running a Modern Rice Mill in name and style of "Sri Nataraja Modern Rice Mill" at Villupuram District. The accused 2 to 5 are the partners and share holders of the second respondent Company. During Thane Cyclone the first respondent's machineries got damaged, which necessitated to replace with new machineries. At that time, accused 2 to 5 approached the first respondent and agreed to supply necessary machineries and as per the terms of agreement the first respondent paid a sum of Rs.60,72,700/- to the accused for supplying of Rice Mill Machineries to first respondent's Rice Mill. The accused supplied some part of machineries and thereafter failed to complete the supply. The first respondent found that the second respondent/1st accused company has stopped its production and closed their activities. For the non-supply of the remaining machineries, the petitioner/second accused being its Director and authorised signatory issued a cheque bearing No.067306 dated 25.11.2012 for a sum of Rs.13,80,000/-. When the cheque was presented for collection it got dishonoured and the same was informed to the petitioner/second accused. The petitioner requested the first respondent to wait for one month within which the amount will be paid in the Bank and settled to the petitioner. Believing the words of the petitioner the first respondent waited for a month. On 08.02.2013, the cheque has been presented for collection in the Bank and once again it got dishonoured for want of sufficient fund. Thereafter, a statutory notice was issued to the accused on 09.03.2013. After receiving the notice the accused neither paid the money nor sent any reply to the first respondent. Hence, the above complaint came to be filed.

3. The contention of the learned counsel for the petitioner is that though the petitioner is an Authorised Signatory of the second respondent Company, the respondents 3 and 4 are the other Directors of the second respondent firm, who are looking after the day-to-day affairs of the Company. The petitioner and the fifth respondent found, third respondent had misappropriated the Company fund to the tune of Rs.40,00,000/- with collusion with the fourth respondent. The petitioner and the fifth respondent gave a complaint for misappropriation of funds against the third respondent to the Superintendent of Police, Krishnagiri which was forwarded to the Inspector of Police, HUDCO Police Station,

Hosur. The first respondent in collusion with the third respondent lodged a false complaint against the petitioner on 21.11.2012. The petitioner was called for enquiry. At that time, in the Police Station the petitioner was asked to immediately settle the sum of Rs.13,18,000/- to the first respondent. Since the petitioner was not having any cheque leaf at that time the petitioner son Dhilip Kumar's cheque of Corporation Bank bearing No.411615 of Hosur Branch was issued to the respondent for a sum of Rs.13,18,000/-. Thereafter the first respondent agreed that 1/3rd amount to be paid by the petitioner in discharge of his liability with regard to the balance amount he shall collect the same from other Directors. On 03.11.2013 a sum of Rs.4,60,000/- was paid by way of Demand Draft drawn in City Union Bank for Rs.2,60,000/- and Rs.2,00,000/- respectively and the same was informed to the first respondent and the first respondent agreed to receive the Demand Draft and returned the cheque issued of Corporation Bank in favour of the first respondent. The first respondent undertook to withdraw the case as against the petitioner contrary to the undertaking given. The first respondent is continuing the proceedings against the petitioner. In support of his contention the learned counsel for the petitioner relied upon the case in M/s.Embee Textiles Ltd and Another Vs. Sadhu Ram reported in 1993 (1) Crimes 394 (P and H). Hence, prayed to quash the S.T.C.No.39 of 2013 on the file of the Judicial Magistrate, Kallakurichi.

4. The learned counsel for the first respondent submitted that the first respondent filed the case against the petitioner and respondents 2 to 5, the second respondent is a firm, the petitioner and the respondents 2 to 5 are the Directors of the second respondent Company. The petitioner being the Director and Authorised Signatory of the second respondent Company, he is responsible for the liability of the second respondent for Rs.13,80,000/-. The only contention of the petitioner is that he had paid his share of 1/3rd of due and balance 2/3rd to be collected from other Directors. The petitioner being an authorised signatory who was incharge of the day to day affairs of the second respondent with other respondents cannot absolve himself by stating so. Due to the non-payment of due amount to the first respondent, the first respondent's Rice Mill had sustained loss, became NPA. The first respondent is facing great difficulty and suffering because of the petitioner. The petitioner's dispute with other Directors is an internal issue amongst them for which the first respondent cannot be denied of his rightful dues. The contentions raised by the petitioner are to be raised during trial and not in a quash petition. Hence, prayed for dismissal of the Original Petition.

5. Considering the rival submissions it is seen that there

is no dispute between the petitioner and the first respondent with regard to non-supply of the machineries and repayment of the amount received for non supply of machineries. The receipt of the cheque issued by the petitioner is not denied by the first respondent. The contention of the petitioner is that his part of liability i.e 1/3rd of the amount was paid by him and the balance amount to be paid by the other Directors cannot be accepted. The contentions and defence of the petitioner are factual in nature. The petitioner shall raise his contention during the trial in S.T.C.No. 39 of 2020. In view of the same this Court is inclined to dismiss the Original Petition. Considering S.T.C.No. 39 of 2013 is pending from the year 2013, the Trial Court is directed to complete the trial within three months from the date of lifting of lock down and normal functioning of Court below.

6. With the above direction, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To:

1. Judicial Magistrate,
Kallakurichi.

2. The Additional Public Prosecutor,
High Court, Madras.

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and M.P.No.1 & 2 of 2014

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GN(28/10/2020)