IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.7016 of 2017 and
Crl.M.P.Nos.5093 & 5094 of 2017

1.HDFC Bank limted,
Rep. by its Managing Director,
HDFC Bank House, SB Marg, Lower Parel (West),
Mumbai 400 013.

2.HDFC Bank Limited,
Rep. by its Authorized Signatory,
V.Saravanamourthy, S/o.Viswanathan,
No.4 & 5, First Floor, 45 Feet Road,
Vallalar Salai,
Pondicherry 605 013. ... Petitioners/
Accused Nos.1 & 2

Vs.

1.Rajarajan & Sons,
Rep. by its Partner K.Rajarajan,
Residing at 92-93, Vinayagar Street,
Dr.MGR Nagar Mudaliarpet,
Pondicherry 605 004. ... Respondent/
Complainant

2.Mahindra & Mahindra Limited,
Rep. by its Managing Director,
Gateway building Appolo Bunder Mumbai-1.

3.Mahindra & Mahindra Limited,
Rep. by its Executive Director,
Mahindra Towers, Kandiveli,
Akrudi, Mumbai-1. ... Respondents
/Accused Nos.3 & 4

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.154 of 2016 on the file of the Judicial Magistrate III at Pondicherry and quash the same in respect of the petitioners.

For Petitioners	:	Mr.K.Rajasekaran
For R1	:	Mr.C.Jayavel
For R2 to R3	:	Mr.G.Kalyan Jhabakh

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ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.154 of 2016, pending on the file of the Judicial Magistrate Court No.III, Puducherry.

2.The 1st respondent filed a private complaint before the learned Judicial Magistrate No.III, Puducherry against HDFC Bank Limited/A1 & A2 and Mahindra & Mahindra Limited/A3 & A4 in C.C.No.154 of 2016, for offence under Sections 192 and 409 IPC.

3.For the sake of convenience and clarity, the respondent/complainant is referred as Rajarajan & Sons, A1 & A2 are referred as HDFC Bank Limited and A3 & A4 are referred as Mahindra & Mahindra Limited.

4.The gist of the case is that Rajarajan & Sons was a Distribution Agent of Mahindra & Mahindra Limited in India. For the business arrangement between Rajarajan & Sons, HDFC Bank Limited and Mahindra & Mahindra Limited, Rajarajan & Sons made arrangement with HDFC Bank Limited for finance to sale of automobile vehicles and opened an account as Inventory Finance Account. As per the Inventory Finance Account Agreement, Rajarajan & Sons and its partners stood as guarantors, lien on booked vehicles and undated security cheques worth of value not exceeding loan limit amount along with covering letter, have to be executed. After executing the said documents, sanction letter was issued by HDFC Bank Limited by fixing a credit limit. On 07.01.2013, HDFC Bank Limited sanctioned loan in continuation of the earlier sanction of loans dated 08.09.2010 and 28.08.2012 under tri-party agreement entered between the dealer Rajarajan & Sons, the manufacturer of automobile vehicle Mahindra & Mahindra Limited and the HDFC Bank Limited.

5.The condition of the sanction of loans under Inventory Finance Account is that the cheque book will not be issued to Rajarajan & Sons. Mahindra & Mahindra Limited is only authorized to withdraw the funds for supply of vehicles to Rajarajan & Sons in advance as per their ordering system, for which, a software system called Dealer Management System was developed by Mahindra & Mahindra Limited with their main server connected through Internet, on which, Rajarajan & Sons is not having access or control. The HDFC Bank Limited apart from financing the business, also financing automobile vehicles to the individual customers on hire and purchase basis. To attract the customers, HDFC Bank Limited is used to appoint one or more employees or canvassing agents and post them in the showroom of Rajarajan & Sons like Distribution Agents. The Inventory Finance Account is operated by Mahindra & Mahindra Limited and the bank cheque book was also with them. The dealer Rajarajan &

Sons is only a signatory in the Inventory Finance and all the other formalities were entitled by the bank as well as Mahindra & Mahindra Limited. Rajarajan & Sons/dealer was only receiving the commission for sale of the vehicle to Mahindra & Mahindra Limited and procuring customers to purchase vehicle on hire and purchase agreement from the HDFC Bank Limited. In fact, all the financial arrangement and transaction were entitled by HDFC Bank Limited and Mahindra & Mahindra Limited.

6.If the amount received by Mahindra & Mahindra Limited under the pretext of supplying vehicle or on supply of vehicle to the Distribution Agent, both Mahindra & Mahindra Limited/manufacturer as well as Distribution Agent Rajarajan & Sons shall repay the same with 18% of interest to HDFC Bank for the first 14 days of the month and thereafter, 24% till the entire loan is wiped out.

7.As per Section 72 of the Contract Act, 1872, HDFC Bank Limited could make demand for the default in payment only with Mahindra & Mahindra Limited only when the amount has been withdrawn by them. This was the arrangement. Contrary to the arrangement, HDFC Bank Limited had filled up blank undated cheques and presented the same for collection in their own bank with a view to adjust the loan amount and the cheques were not drawn in favour of the bank to discharge the liability by Rajarajan & Sons. The Bank had no right to fill up the blank and undated cheques and present the same for collection to the respondent unless there is a malafie intention to proceed against Rajarajan & Sons, to procure conviction of offence under Section 138 of the Negotiable Instruments Act, 1881.

8.The blank and undated cheques were given as security, which was recorded in the loan agreement. HDFC Bank Limited had filled up the cheques to the tune of Rs.3,20,00,000/- as per its whims and fancies. As on date, the liability of Rajarajan & Sons is only Rs.37,43,867.66/- only. Thus, the bank had committed the offences under Section 192 and 409 IPC by fabricating false documents. Further, Rajarajan & Sons and the accused have MoU dated 28.08.2014 to sort out the issue. On contrary to the MoU, Mahindra & Mahindra Limited had stopped supply of vehicles to Rajarajan & Sons and thereby, caused irreparable loss and breach of trust. Rajarajan & Sons had made investment of around Rs.50 Crores, believing the agreement between HDFC bank and Mahindra & Mahindra Limited. The Rajarajan & Sons had already filed a suit in O.S.No.2042 of 2015 as well as filed claim petition before the Arbitration Tribunal, Mumbai against Mahindra & Mahindra Limited for value of Rs.106 crores.

9.The cheques were not drawn in favour of HDFC bank Limited to discharge in whole or in part of the debt under Inventory Finance Account, but they were given as security to avail loan only. Therefore, the dishonour of cheques were not an offence under Section 138 of the Negotiable Instruments Act, 1881. Further during the period from 24.01.2004 to 29.03.2014, the Rajarajan & Sons on various dates had paid around Rs.1,09,04,124/-, which was not given credit.

10.The learned counsel for the petitioners/A1 & A2 submitted that Rajarajan & Sons/complainant was a dealer, the petitioners/A1 and A2 are HDFC Bank Limited and A3 and A4 are Mahindra & Mahindra Limited is the manufacturer of automobile vehicles. There was a business arrangement between the dealer, bank and manufacturer in the supply and sale of vehicles, for which the dealer had entrusted cheques with a covering letter giving authority to utilize the cheques. On authority only, the said cheques were present and cases were initiated. Thereafter, settlement arrived.

11.He further submitted that during the pendency of the above quash petition, the issues between Rajarajan & Sons, Mahindra & Mahindra Limited and HDFC Bank Limited were sorted out and settlement arrived. As per the settlement, C.C.No.154 of 2016 was withdrawn on 20.01.2020.

12.It is seen that the issues between the dealer/complainant, HDFC Bank Limited/A1 and A2 and Mahindra & Mahindra Limited/A3 and A4 are resolved and the proceedings in C.C.No.154 of 2016 is also withdrawn by Rajarajan & Sons/respondent/complainant on 20.01.2020.

13.In view of the same, nothing survives in this matter. Hence, this Criminal Original Petition is closed. Consequently, the connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Judicial Magistrate No.III,
Puducherry.

+1cc to M/s.Surana & Surana, Advocate in SR.25256

Crl.O.P.No.7016 of 2017

RSV (CO)
RV (16/09/2020)