IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.4393 of 2017 and
Crl.M.P.Nos.3280 & 3281 of 2017

1.Mahindra & Mahindra Ltd,
Represented by its Authorized Signatory,
Mr.Rajesh Bheesan,
Gateway building Appolo Bunder, Mumbai-1.

2.Mahindra & Mahindra Ltd,
Represented by its Authorized Signatory,
Mr.Rajesh Bheesan,
Gateway building Appolo Bunder, Mumbai-1. ... Petitioners

Vs.

Rajarajan & Sons,
Represented by its Partner,
92-93, Vinayagar Street,
Dr.MGR Nagar Mudaliarpet,
Pondicherry 605 004. ... Respondent

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

For Petitioners : Mr.G.Kalyan Jhabakh

For Respondent : Mr.R.Ganesh Kumar

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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 and 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/A3 & A4 submitted that Rajarajan & Sons/complainant was a dealer and there was a business arrangement between the dealer, bank and manufacturing in the supply and sale of vehicles for which the dealer had entrusted cheques with a covering letter giving authority to utilize the cheques, in case of default. On authority only, the said cheques were present and cases were initiated. Thereafter, the settlement arrived.

11.The learned counsel for the petitioners further submitted that the complainant was a distributor and dealing with the vehicles of Mahindra & Mahindra Limited and business module was work done and tri-party agreement was entered and as per the module, Rajarajan & Sons would place orders for the vehicle, the HDFC Bank Limited would release the payments for the supply. Thereafter, the vehicle would be supplied to the dealer and the dealer, on sale of the vehicle, would credit the sale proceeds to the bank and thereafter, the amount advanced to Mahindra & Mahindra Limited by the bank would be adjusted. The service charge as well as delayed payment interest would be collected and it was on this arrangement, Rajarajan & Sons was made as an authorized dealer and thereby the secured business could be carried on. The dealer/Rajaragan & Sons not addressing as per tri-party agreement and has failed in making the payment in certain cases, for which the HDFC Bank Limited had also imposed penal interest, which mounted. The dealer/Rajarajan & Sons could not make the payment as per the agreement. The financial cycle got stuck and thereby there was some misunderstanding between Rajarajan & Sons, HDFC Bank Limited and Mahindra & Mahindra Limited. The HDFC Bank Limited had initiated proceedings to recover its dues by filing the cases under Section 138 of the Negotiable Instruments Act, which was objected and questioned by Rajarajan & Sons on the ground that it was against the tri-party agreement and hence, the above complaint came to be filed.

12.As far the Mahindra & Mahindra Limited is concerned, apart from supplying the vehicles and receiving the payments from the bank they have no say with regard to other transactions. The supply of vehicles to Rajarajan & Sons was stopped since the payment was not made, by which the HDFC Bank Limited and Mahindra & Mahindra Limited were arrived as accused. During the pendency of the quash petition, settlement was arrived and the dispute was resolved and in furtherance to the settlement C.C.No.154 of 2016 has been withdrawn by Rajarajan & Sons.

13.It is seen that the issues between the dealer/Rajarajan & Sons, HDFC Bank Limited/A1 and A2 and Mahindra & Mahindra Limited/A3 and A4 were resolved and the proceedings in

C.C.No.154 of 2016 was also withdrawn by Rajarajan & Sons/respondent/complainant on 20.01.2020.

14.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.25255

Crl.O.P.No.4393 of 2017

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