



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:17.12.2020

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THE HONOURABLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

WEB COPY

Crl.O.P.(MD).Nos.11739 and 11743 of 2017

and

Crl.M.P.(MD).Nos.8081, 8082, 8088 and 8089 of 2017

V.L.K.Sivaji

... Petitioner in both Crl.O.Ps./Accused

Vs

M/s.Tamil Nadu Cements Corporation Ltd.,
A Company incorporated under the companies Act,
Unit at Alangulam,
Rajapalayam(VIA),
Virudhunagar District. ... Respondent in both Crl.O.Ps.
Rep. by its duly constituted Agent and
Assistant Manager(personnel)
M.Uthayakumar

COMMON PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records relating to the proceedings in C.C.Nos.219 and 221 of 2017 on the file of the Judicial Magistrate, Rajapalayam, and quash the same.

For Petitioner : No appearance
For Respondent : Mr.A.Sivaji
(in both Crl.O.Ps.)

COMMON ORDER

These criminal original petitions have been filed seeking to quash the proceedings in C.C.Nos.219 and 221 of 2017 on the file of the learned Judicial Magistrate, Rajapalayam, as against the petitioner.

2.The respondent herein lodged a complaint for the offence under Sections 138 and 142 of NI Act as against the petitioner herein. According to the respondent, the respondent is carrying on business in the manufacture of cement and allied products. While being so, the petitioner approached to appoint him as one of the stockist to deal with the products manufactured by the respondent in the name of "Arasu" Cement. Thereafter, the petitioner had agreed to act as one of the dealer of the respondent in selling of the cement bags. The petitioner has also agreed to carry on the business and placed the order for supply of



cement bags and agreed to pay the outstanding amount with interest at the rate of 18% per annum. Accordingly, the respondent has supplied the cement bags on credit basis to the petitioner herein. Out of the above said dealings, the petitioner is liable to pay a sum of Rs.9,25.350/- as on 29.03.2017. When the respondent has demanded the petitioner to pay and settle the outstanding amount with interest, the petitioner has issued alleged cheques towards discharge of their liability in part. The respondent presented the above cheques for collection and the same were returned dishonoured for the reason as "Funds insufficient". Immediately, the respondent has issued statutory notice on 10.05.2017 to the petitioner herein. The said notice was refused and returned by the petitioner on 12.05.2017. Hence, the present private complaint.

3. There is no appearance on behalf of the petitioner. Heard the learned counsel appearing for the respondent.

4. The petitioner is come forward with this petition to quash the proceedings on the ground that the statutory notice issued by the respondent on 10.05.2017, the same was not at all served to the petitioner, since the petitioner met with an accident on 19.04.2017 and left to Coimbatore to his son's house for better treatment. Therefore, no notice was served to the petitioner and as such, there is no cause of action to lodge the complaint as against the petitioner. The petitioner has also raised another ground that at the time appointing the petitioner as Stockist, the blank cheques were given to the respondent as security purpose and subsequently, the said cheques were misused by the respondent as if the petitioner is on due.

5. On perusal of the records, the statutory notice was issued by the respondent on 10.05.2017 and the same was returned by the petitioner herein with endorsement that he refused to receive the same. The respondent has filed the return cover with endorsement and as such the respondent duly complied with the mandatory provisions as contemplated under Section 138 of the Negotiable Instruments Act, in respect of causing statutory notice. In respect of the ground raised by the petitioner that the alleged cheques were issued only for security purpose, there is absolutely no material to show that the cheques were issued as security purpose. Since the petitioner has also agreed to pay the amount as per the request placed by them, without due amount the petitioner also agreed to pay the amount with interest at the rate of 18% per annum. Therefore, the grounds raised by the petitioner is question of facts and it cannot be considered under Section 482 of Cr.P.C.



6. Accordingly, these criminal original petitions are dismissed. However, the learned Judicial Magistrate, Rajapalayam, is directed to complete the trial in C.C.Nos.219 and 221 of 2017 within a period of six months from the date of receipt of a copy of this order. Consequently, the connected criminal miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsg

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Judicial Magistrate,
Rajapalayam.

copy to

The Registrar (Judicial),
Madurai Bench of Madras High Court, Madurai.

+2 CC to Mr.A.Sivaji, Advocate SR.No. 25922

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SMV(CO)

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