IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.NO. 13944 OF 2015
AND
CRL.M.P.NO. 1 OF 2015

1. Sri Amirtha Hi Tech Coco Food,
   Products Exports,
   Rep. by its Managing Partner,
   M. Ponnusamy,

2. M.Ponnusamy ... Petitioners

Versus

P. Balakrishnan ... Respondent

Prayer :

Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records pertaining to the case in STC.No.54 of 2014 on the file of the learned Judicial Magistrate Fast Track Level - I, Erode and quash the same.

For Petitioners : Mr.N.Manokaran

For Respondent : Ms.Prithivi
for Mr.S.Kaithamalaikumaran

ORDER

This Criminal Original Petition has been filed by the petitioners/A1 and A2 seeking to quash the proceeding in S.T.C. No.54 of 2014 on the file of Judicial Magistrate, Fast Track Court-I, Erode.

2. The respondent/complainant filed a criminal complaint before the learned Judicial Magistrate, Fast Track Court-I, Erode, against the accused for an alleged offence punishable

under Section 138 of the Negotiable Instruments Act, (in short "N.I. Act") 1881.

3. The case of the respondent/complainant is that the first accused is a Partnership Firm doing business in Coco Products in the name and style of "Sri Amirtha Hi Tech Coco Food Products Exports' in the aforesaid address. The second petitioner/A2 is the Managing Partner of the Firm/A1 and he is taking care of entire business affairs of the company including finance matters as per the agreement made between the partners of the first accused. According to the respondent/complainant, in the course of business transactions, on 09.04.2013, the second accused under the capacity of Managing Partner of first accused/Firm, had borrowed a sum of Rs.44,00,000/- from the respondent/complainant to meet urgent business expenses of the Firm for interest at the rate of 24% p.a. and handed over a cheque of the first accused bearing No.982735, dated 09.07.2013 drawn on Indian Bank, Erode in favour of the respondent/complainant in order to discharge the aforesaid liability and promised to honour the same on the stipulated date and the cheque was issued for the legally enforceable liability. As per the instruction of the second accused, the respondent/complainant presented the aforesaid cheque for collection on 09.07.2013 and presented it on 10.07.2013, but the cheque was returned. When it was intimated, the second accused apologized and asked to represent the cheque. Therefore, on 10.08.2013, the cheque was once again presented for collection through ICICI Bank Limited, Gobi Branch and the same was returned on 11.07.2013 as "Payment Stopped by the Drawer". Even thereafter, the complainant repeatedly demanded for payment, but the petitioner/accused had not chosen to make payment of amount to the complainant for the dishonoured cheque. Inspite of repeated demands made in person, the petitioners/accused have neglected and failed to make payment. Thereafter, the respondent/complainant issued a notice, dated 15.08.2013 to the accused, calling upon them to make good the payment due on the cheques and the same was served on the second accused on 19.08.2013. Though he received the notice, he failed to give reply. Since the said notice did not evoke any response from the accused, the respondent filed a complaint under section 138 of Negotiable Instrument Act, 1881, before the Judicial Magistrate, Fast Track Level No.I, Erode.

4. The learned counsel for the petitioners submitted that there was a Partnership Firm, by name, M/s. Sri Amirtha Coir and Farm Products Limited, in which, there are four partners, namely, (i) V.Baskaran (ii) P.Kauvya Deepak (iii) A.Eswaramoorthy and (iv) M.Ponnusamy (A2). The substance of the Partnership Firm was reconstituted by inducting new Partners, namely, (i) M.N.Prithiviraj, the father of the complainant, (ii)

M.Ponnusamy (A2) (iii) V.Baskaran (iv) P.Balakrishnan, the complainant, (v) B.Nithya and (vi) P.Kauvya Deepak. Thus, the complainant/respondent herein is also one of the Partners of having their place of business at SIPCOT, Perundurai. The second petitioner and his son P.Kauvya Deepak have started the first accused Firm at Seerangagoundenpalayam, Perundurai. Both the Firms have been carrying on the business of different products. There was a dispute between the Partners of the Firm. While so, on 28.06.2013, the second petitioner herein noticed that a cheque bearing No.982735 dated was missing. The second petitioner suspected foul play. Therefore, on 02.07.2013, he has been sent a written communication to the bankers, namely, the Senior Manager, Indian Bank, Erode Branch stating that the subject cheque was lost. Therefore, if anybody presented the said cheque, it need not be entertained. After the letter was given on 02.07.2013, the respondent/complainant has presented the above said cheque for collection and it was dishonoured. Therefore, it is the definite exercise of the petitioners that they never borrowed any amount from the respondent/complainant and the respondent/complainant did not make any demand for repayment of the alleged dishonoured cheque and there is no liability on the part of the petitioners to pay the cheque amount. Further, on receipt of the statutory notice, the petitioners had sent a detailed reply, in which, they have mentioned the above facts. Hence, the learned counsel for the petitioner would submit that the transaction alleged to have been taken place between the petitioners and the respondent/complainant is a fraudulent transaction and there was no money borrowed from the respondent. Due to the dispute in the partnership business, the respondent/complainant has presented the cheque and initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881. The entire proceedings are nothing but an abuse of process of law and therefore, he prayed for quashing of the criminal proceedings.

5. The learned counsel appearing for the respondent/complainant submitted that whether the cheque in question was issued for legally enforceable debt or liability. The petitioner has given "Stop Payment Letter" to the bank only to escape from the clutches of law. The petitioner has fraudulently issued the "Stop Payment Letter" for absolving payment. In any event, whether the cheque has been issued for an legally enforceable debt or liability has to be decided only at the time of trial and therefore, the learned counsel for the respondent prayed for dismissal of the criminal original petition.

6. Heard both side and perused the materials available on record.

7. A perusal of the complaint would show that the petitioners have alleged to have received a sum of Rs.44,00,000/- from the respondent/complainant and to discharge the same, they have issue a cheque in question and when it was presented for collection, it was dishonoured twice. Therefore, the respondent/complainant has filed the complaint. It is also seen from the records that the statutory notice has been sent by the respondent. The petitioner has also sent a reply notice. In the reply notice, it has been stated that there are some dispute between the partners of the petitioner Firm, namely, the petitioner, the respondent and the father of the respondents. It was also stated that on 28.06.2013, the respondent noticed that the cheque in question was missing and therefore, he has given a "Stop Payment Letter" to the Bank. These averments were suppressed in the complaint filed under Section 138 of the Negotiable Instruments Act. The petitioner has not disclosed that he was one of the Partners of the Firm. Further, in the complaint, the respondent/complainant has alleged that for the statutory notice sent by him, the petitioners did not respond. This is factually incorrect, inasmuch as the petitioners have given a reply notice to the statutory notice. Further, this Court noticed that even before the presentation of the cheque in question, the petitioners have given "Stop Payment Letter" to the bank suspecting that the cheque in question may be misused by someone. Therefore, this Court is of the view that the issuance of the cheque will not arise as mentioned above, since there are material suppressions made by the respondent/complainant while complaining under Section 138 of the Negotiable Instruments Act. Hence, this Court is of the considered view that the petitioners need not be subjected to an ordeal of trial in the criminal proceedings initiated by the respondent/complainant. The proceedings under Section 138 of the Negotiable Instruments Act is perverse in terse an abuse of process of law. Therefore, the entire criminal proceedings alleged against the petitioners are hereby quashed.

8. Accordingly, the Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msm

To

1. The Judicial Magistrate,
   Fast Track Level - I, Erode.

2. The Public Prosecutor, High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.67761

Crl.O.P.No. 13944 of 2015
and
Crl.M.P.No. 1 of 2015

AD(CO)
PM/29/12/2021