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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NOS. 4212, 4213, 4214, 4215, 4216, 5677, 5680, 5683,
8866, 11177, 16360, 20353 & 20355 OF 2018 AND 2362 OF 2019
AND

CRL.M.P.NOS.1961, 1962, 1965, 1966, 1969, 1970, 1973, 1974,
1977, 1978, 2846, 2847, 2852, 2853, 2858, 2859, 4581, 4582,
5752, 8425, 10902, 10904, 10905, 10906, 10908 & 10909 OF 2018
AND 1535 OF 2019

1. M/s.Nag India Pvt. Ltd.,
A Private Ltd Company duly
rep.by its Managing Director,
Mr.S.Chockalingam Pillai

2. Mr.S.Chockalingam Pillai

3. C.Jagdadeesh

.. Petitioners in all CRL.OP's

Vs.

M.Mohammed Siraj

.. Respondent in CRL.O.P.No.4212 of 2018

Mahmudha Thilrus Mazher Ali

.. Respondent in CRL.O.P.No.4213 of 2018

A.S.Mufeeth Ahamed

.. Respondent in CRL.O.P.No's.4214, 5680,
8866, 11177 of 2018

L.Riyaz Ahmed

.. Respondent in CRL.O.P.No.4215 of 2018

B.Farmanullah

.. Respondent in CRL.O.P.No.4216 of 2018

S.Mumtaj Begum

.. Respondent in CRL.O.P.No.5677 of 2018

J.J.Traders

Proprietor M.K.Jamal Mohammed

.. Respondent in CRL.O.P.No.5683 of 2018



K.A.SHATHIK

.. Respondent in CRL.O.P.No.16360 of 2018,
20353 of 2018, 20355 of 2018 and 2362 of 2019

PRAYER: Criminal Original Petition filed under Section 482 of
the Code of Criminal Procedure,

CRL OP No.4212 of 2018:

To call for the entire records in pursuant to the criminal
proceedings in S.T.C.No.610 of 2017 pending on the file of the
Court of Judicial Magistrate, Erode/Fast Track Court-1 and quash
the same.

CRL OP No.4213 of 2018:

To call for the entire records in pursuant to the criminal
proceedings in S.T.C.No.611 of 2017 pending on the file of Court
of Judicial Magistrate, Erode/Fast Track Court-1 and quash the
same.

CRL OP No.4214 of 2018:

To call for the entire records in pursuant to the criminal
proceedings in S.T.C.No.612 of 2017 pending on the file of Court
of Judicial Magistrate, Erode/Fast Track Court-1 and quash the
same.

CRL OP No.4215 of 2018:

To call for the entire records in pursuant to the criminal
proceedings in S.T.C.No.613 of 2017 pending on the file of Court
of Judicial Magistrate, Erode/Fast Track Court-1 and quash the
same.

CRL OP No.4216 of 2018:

To call for the entire records in pursuant to the criminal
proceedings in S.T.C.No.614 of 2017 pending on the file of Court
of Judicial Magistrate, Erode/Fast Track Court-1 and quash the
same.

CRL OP No.5677 of 2018:

To call for the entire records in pursuant to the criminal
proceedings in STC No.37 of 2018 pending on the file of Court of
Judicial Magistrate, Erode/Fast Track Court-II and quash the
same.



CRL OP No.5680 of 2018:

To call for the entire records in pursuant to the criminal proceedings in S.T.C.No.23 of 2018 pending on the file of Court of Judicial Magistrate, Erode/Fast Track Court-I and quash the same.

CRL OP No.5683 of 2018:

To call for the entire records in pursuant to the criminal proceedings in S.T.C.No.13 of 2018 pending on the file of Court of Judicial Magistrate, Erode/Fast Track Court II and quash the same.

CRL OP No.8866 of 2018:

To call for the entire records in pursuant to the criminal proceedings in S.T.C.No.79 of 2018 pending on the file of Court of Judicial Magistrate, Erode/Fast Track Court-I and quash the same.

CRL OP No.11177 of 2018:

To call for the entire records in pursuant to the criminal proceedings in S.T.C.No.116 of 2018 pending on the file of Court of Judicial Magistrate/Fast Track Court-1, Erode and quash the same.

CRL OP No.16360 of 2018:

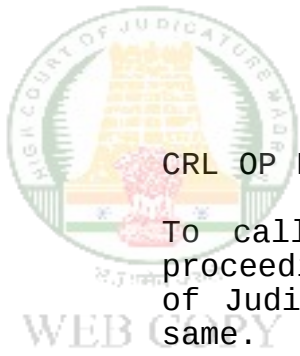
To call for the entire records in pursuant to the criminal proceedings in S.T.C.No.275 of 2018 pending on the file of Court of Judicial Magistrate/Fast Track Court-II, Erode and quash the same.

CRL OP No.20353 of 2018:

To call for the entire records in pursuant to the Criminal proceedings in STC.No.387 of 2018 pending on the file of Court of Judicial Magistrate Fast Track Court-II, Erode and quash the same.

CRL OP No.20355 of 2018:

To call for the entire records in pursuant to the criminal proceedings in S.T.C.No.420 of 2018 pending on the file of court of Judicial Magistrate/Fast Track Court-II, Erode and quash the same.



CRL OP No.2362 of 2019:

To call for the entire records in pursuant to the criminal proceedings in STC No.680 of 2018 pending on the file of court of Judicial Magistrate/Fast Track Court-II, Erode and quash the same.

For Petitioner : Mr.T.P.Prabakaran
in All CRL.OP's

For Respondent : Mr.M.Guruprasad
in All CRL.OP's

COMMON ORDER

The petitioners have filed these petitions to call for the entire records in pursuant to the criminal proceedings in S.T.C.Nos.610/2017, 116/2018, 614/2017, 613/2017, 612/2017, 611/2017, 23/2018, 79/2018, pending on the file of the Court of Judicial Magistrate, Erode/Fast Track Court-1 and S.T.C.Nos.13/2018, 37/2018, 680/2018, 420/2018, 387/2018, 275/2018, on the file of the Court of Judicial Magistrate, Erode/Fast Track Court-II, and quash the same.

2. The case of the petitioner is that she is arrayed as one of the accused in cases pending before the Court of Judicial Magistrate, Erode/Fast Track Court-1 and before the Court of Judicial Magistrate, Erode/Fast Track Court-II, for the offences under Section 138, 141 and 142 of the Negotiable Instrument Act, 1881. The accused Company is running a leather business in the name and style of M/s.Nag India Pvt Ltd., As per the request of the petitioner Company, the complainant Company agreed to supply the 'Wet Blue Cow Hides' and supplied the same. During the course of business, the accused Company was due and payable to the respondent Company for the supply made. For which, the 2nd accused had issued various cheques on different dates for discharge of the debts arising out of supply. When the said cheques were present in bank, it was returned and dishonoured by the complainant's Bank with an endorsement of 'Payment Stopped by the Drawers'. Therefore, the respondent has filed the complaints, pending on the file of the Court of Judicial Magistrate, Erode.

3. It is further alleged by the petitioner that the respondent has admittedly not issued any legal notice to the accused as prescribed under the provisions of Negotiable Instruments Act, however, in the complaint, it is stated that a legal notice was duly served to all the Directors including the petitioner herein. Therefore, the complaint filed under Section



138 Negotiable Instrument Act, is legally unsustainable. Hence, challenging the said complaint, the present petition is filed.

4. The learned counsel appearing for the petitioner submitted that the accused Company had issued a letter to the respondent through their counsel on 29.07.2017, stating that vide order dated 10.07.2017, issued by National Company Law Tribunal, Chennai Bench, the Corporate Insolvency Resolution Process against the accused Company has commenced and hence the 2nd accused was unable to honor the post dated cheques in favour of the respondent Company. Further, the complainant has filed the complaint on 21.12.2017, before that on 10.07.2017, the NCLT, Chennai, had initiated insolvency proceedings against the accused Company. On 24.07.2017, a public announcement was issued by the Insolvency Resolution Professional, requesting all the financial creditors of the accused Company to submit their proof of claims and further on the same day, the accused Company informed the respondent about the commencement of Corporate Insolvency Resolution Process and requested not to present the cheques. In spite of that the complainant has presented the cheques for collection and filed the complaint, as if the accused company failed to settle their debts. In view of the commencement of insolvency proceedings against the accused Company, the complainant is not legally entitled to file a complaint before the Trial Court.

5. Further, the learned counsel has drawn the attention of this Court to the decision of the Hon'ble Supreme Court in the decision reported in 2021 SCC Online SC 152 (P.Mohanraj and Others Vs. Shah Brothers Ispat Pvt., Ltd.,) and submitted that for the period of moratorium, no proceedings under Section 138 and 141 of the Negotiable Instrument Act, 1881, can be initiated against the corporate debtor, since there is a statutory bar for initiation of such proceedings. It is further alleged by the petitioner that in view of the commencement of insolvency proceedings against the 1st petitioner Company, the complainant is not legally entitled to file a complaint before the Trial Court. Therefore, the complaint against the petitioner is not maintainable and accordingly prays for allowing the said petition.

6. The learned counsel appearing for the respondent fairly conceded that insofar as extension of the benefit of moratorium in respect of the 1st petitioner is concerned, he has no serious objection for quashment of the case in respect of the 1st petitioner Company. However, he vehemently opposed quashing of the case as against petitioners 2 and 3 and made a submission that the petitioners 2 and 3 are liable to be proceeded against for their personal acts as per the aforesaid decision of the Hon'ble Supreme Court, cited by the learned counsel for the petitioner, wherein it has been categorically concluded that the



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moratorium provision contained in Section 14 of the Insolvency Bankruptcy Code, would apply only to corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instrument Act and, therefore, prays for dismissal of this petition with respect to petitioners 2 and 3.

7. This Court considered the rival submissions and also perused the materials available on record.

8. It is not in dispute that the cheques issued to the complainant's Company were dishonored with an endorsement 'Payment Stopped by the Drawers'. In that regard, the 1st petitioner Company had issued a letter to the respondent through their counsel stating about the initiation of insolvency process by National Company Law Tribunal (for short 'NCLT') against the 1st petitioner Company and due to which, the 2nd accused / 2nd petitioner was unable to honor the post dated cheques issued in favour of the respondent Company. In spite of the communication of the 1st petitioner Company regarding the insolvency process, the complainant has presented the cheques for collection, which was dishonored and thereby filed the complaint against the 1st petitioner Company.

9. Notwithstanding the above said fact, in the decision of P.Mohanraj (supra), the Hon'ble Supreme Court has, in the wake of declaration of moratorium by the Tribunal under the Insolvency and Bankruptcy Code, in paragraph no.103 of the said judgment, held as under:

'103. Since the Corporate debtor would be covered by the moratorium provision contained in Section 14 of the IBC, by which continuation of Section 138/141 proceedings against the corporate debtor and initiation of Section 138/141 proceedings against the said debtor during the corporate insolvency resolution process are interdicted, what is stated in paragraphs 51 and 59 in Aneeta Hada (supra) would then become applicable. The legal impediment contained in Section 14 of the IBC would make it impossible for such proceeding to continue or be instituted against the corporate debtor. Thus, for the period of moratorium, since no Section 138/141 proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Section 141(1) and (2) of the Negotiable Instrument Act. This being the case, it is clear that the moratorium provision contained in



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Section 14 of the IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act.''

10. From a perusal of the above, it is evident that there is a categorical finding recorded by the Apex Court that the moratorium provision contained in Section 14 of the Insolvency Bankruptcy Code, would apply only to corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instrument Act and thereby, it is clearly settled that the criminal liability of natural persons in case of complaint filed under Section 138 and 141 of the Negotiable Instrument Act, 1881 would survive, but would not be attracted against the company. The decision of the Hon'ble Supreme Court is squarely covers the case on hand.

11. In the case on hand, the insolvency process was initiated by NCLT on 10.07.2017 and moratorium has been declared under the Insolvency & Bankruptcy Code. Therefore, as held by the Hon'ble Supreme Court, the moratorium was only in respect of the corporate debtor and not in respect of the directors / management and therefore, the petitioners 2 and 3 as natural persons, are liable for prosecution. However, in view of declaration of moratorium by NCLT, the prosecution as against the company cannot be allowed to continue.

12. Therefore, this Court is inclined to quash the proceedings in respect of 1st petitioner and insofar as the petitioners 2 and 3 are concerned, this Court is of the opinion that the issue is a triable issue and it requires appreciation of evidence and this Court cannot decide the same in exercise of its jurisdiction under Section 482 of Criminal Procedure Code. It is left open to the petitioners 2 and 3 to raise all the grounds before the Court and the same shall be considered on its own merits and in accordance with law. This Court is not inclined to interfere with the proceedings pending before the Court below.

13. For the reasons aforesaid, these Criminal Original Petitions are allowed in respect of 1st petitioner is concerned and S.T.C.Nos.610/2017, 116/2018, 614/2017, 613/2017, 612/2017, 611/2017, 23/2018, 79/2018, pending on the file of the Court of Judicial Magistrate, Erode/Fast Track Court-1 and S.T.C.Nos.13/2018, 37/2018, 680/2018, 420/2018, 387/2018, 275/2018, on the file of the Court of Judicial Magistrate, Erode/Fast Track Court-II, are quashed. However, in respect of petitioners 2 and 3, this petition is disposed of directing the trial court to dispose of cases as expeditiously as possible as



per seniority of the case. The petitioners and respondent are directed to co-operate with the trial court for the early completion of trial. Further, taking into consideration the request as made by the learned counsel for the petitioner, their appearance before the trial court is dispensed with except for their appearance for the purpose of receiving the copy of the proceedings u/s 207 Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular reason, the presence of the petitioners is necessary, the trial court, at its wisdom, shall direct their appearance on those days. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

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Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Fast Track Court-1, Erode.
2. The Judicial Magistrate,
Fast Track Court-II, Erode.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.P.Prabakaran, Advocate, S.R.No.46242

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.46542

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RLD(CO)
RLP(11/10/2021)