

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P No.6325 of 2018

and

Crl.M.P Nos.3202 & 3203 of 2018

R.Parameswari

...Petitioner

Vs.

1. Punjab National Bank,
Assistant Recovery Management Branch,
448-A, Dr.Nanjappa Road,
Coimbatore.
Rep. through its Authorised Officer,
Mr.S.Madhu Mohan

2. M/s.Diamond Apparels
Rep. by Proprietor Sri S.Rajendran
No.12, Nethaji Nagar, 1st Street,
Karumarapalayam,
Uthukuli Road,
Tirupur.

3. S.Rajendran

.. Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records pertaining to the proceedings in CC.No.387 of 2017 on the file of the learned Fast Track

Magistrate-I, Coimbatore so as to quash the same.

For Petitioner : Mr.T.R.Sundaram

ORDER

The petitioner has filed this petition seeking to quash the proceeding in CC.No.387 of 2017 on the file of the learned Fast Track Magistrate-I, Coimbatore.

2. The case of the petitioner is as follows:

The respondents 2 & 3 herein obtained loan from the first respondent viz., Panjab National Bank and the petitioner herein stood as guarantor. The respondents 2 & 3 were not prompt in repaying the loan and there were long outstanding dues and their account was declared as non performing asset. The secured creditor/first respondent took steps for recovering the loan. The third respondent is the proprietor of the second respondent, issued a cheque. However, the same was dishonored. The first respondent issued a statutory notice. Despite notice served to the respondents, there is no representation on their behalf. The first respondent herein filed a complaint against the respondents 2 & 3 and also the petitioner for offence under Section 138 of Negotiable

Instruments Act (hereinafter referred to as "NI Act") before the learned Judicial Magistrate, Coimbatore. The learned Judicial Magistrate has taken cognizance of the same, registered the complaint. Aggrieved over the same, the petitioner has come forward with this Original Petition seeking to quash the proceedings.

3. The learned counsel for the petitioner contended that the petitioner was an innocent guarantor and he has signed as guarantor without understanding the contents thereof. The learned counsel further submitted that the disputed cheque was issued by the third respondent in his capacity as proprietor of the second respondent and the petitioner has absolutely no knowledge of such issuance of cheque. The cheque transaction is purely between the respondents 2 & 3 and the first respondent. Therefore, the learned counsel prays that the proceedings may be quashed against the petitioner.

4. It is elementary that in any loan transaction, a guarantor has equal rights and responsibilities as that of the debtor. In case, the debtor

fails to repay the loan amount, the secured creditor can very well proceed against the guarantor and recover the dues. This aspect of the ratio is admitted and undisputed.

5. However, in the case on hand, the third respondent in his capacity as the proprietor of the second respondent issued a cheque in favour of the first respondent towards discharge of loan amount. However, on presentation, the cheque was dishonored for want of sufficient funds. Therefore, the first respondent proceeded against the respondents 2 & 3 by preferring a private complaint before the learned Judicial Magistrate, Coimbatore. The first respondent has also added the petitioner in the complaint, since the petitioner stood as guarantor in the loan amount.

6. As rightly pointed out by the learned counsel for the petitioner that the issuance of cheque towards discharge of loan amount is an altogether different action and the petitioner is in no way connected with such issuance. The first respondent has every right to proceed against the

respondents 2 & 3 for dishonor of the cheque under section 138 of NI Act. However, the inclusion of the name of the petitioner in the complaint for a cheque issued by the third respondent is totally unwarranted. Therefore, this Court has no hesitation to quash the proceedings against the petitioner in CC.No.387 of 2017 on the file of the learned Judicial Magistrate-I, Coimbatore. However, the first respondent is at liberty to proceed against the petitioner for recovering the dues in accordance with law.

7. In the result, the Criminal Original Petition is allowed and the proceedings in C.C.No.387 of 2017 on the file of the learned Judicial Magistrate-I, Coimbatore is quashed as against the petitioner alone. Consequently, connected miscellaneous petitions are also closed.

सत्यमेव जयते

WEB COPY 02.08.2021

Index: Yes/No
Internet: Yes/No
rli

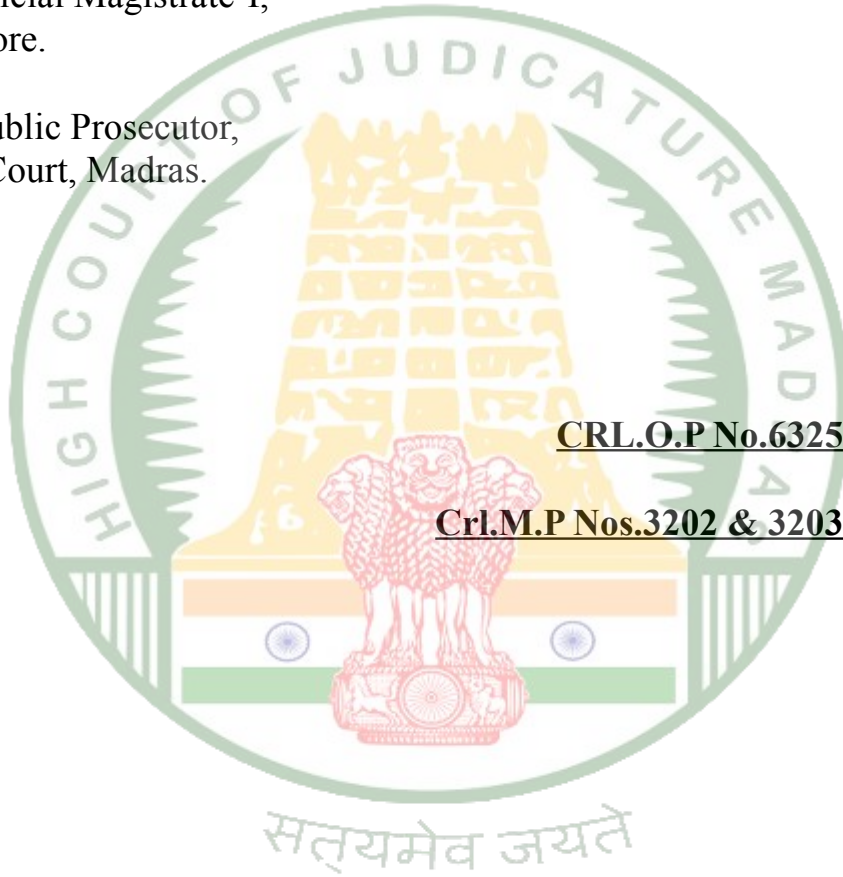
M.DHANDAPANI.J,

rli

To

1.TheJudicial Magistrate-I,
Coimbatore.

2. The Public Prosecutor,
High Court, Madras.



CRL.O.P No.6325 of 2018
and
Crl.M.P Nos.3202 & 3203 of 2018

WEB COPY

06.08.2021