

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.04.2021
CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.6545 of 2021 and
Crl.M.P.Nos.4345 & 4346 of 2021
and
Crl.O.P.No.6553 of 2021 and
Crl.M.P.Nos.4347 & 4349

1.SHANTI DEVI PIPE INDUSTRIES,
Rep. by its Partner,
Mr.Anilkumar Jain

2.Anil Kumar Jain,
Partner M/s.Shanthi Devi Pipe Industries.

3.Naresh Jain,
Partner M/s.Shanti Devi Pipe Industries,
All at 136/1B, Parivallal Cross Street,
Murugappa Nagar,
Ernavoor, Chennai-600 057.

... Petitioners in both the cases

Versus

M/s.Third Wave Holdings Private Limited,
Represented by its authorized representative,
Mr.Ramamurthy,
No.135/109, Poonamallee High Road,
Puraswalkkam, Chennai-600 084.

... Respondent/Complainant
in Crl.O.P.No.6545 of 2021

Mr.Prakash Chand Jain, सत्यमेव जयते
Rep. by his Account Manager cum Power of Attorney Agent,
Mr.Ramamurthy,
No.420/421, Mini Street,
Kondithope, Chennai-600 001.

... Respondent/Complainant
in Crl.O.P.No.6553 of 2021

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash all further proceeding in C.C.Nos.3447 & 3446 of 2020 respectively pending on the file of the learned Fast Track Court No.2, Allikulam, Chennai.

For Petitioners : Mr.B.Thirumalai in both cases

COMMON ORDER

The petitioners, who are accused in C.C.No.3447 of 2020 has filed Crl.O.P.No.6545 of 2021 and the petitioners, who are accused in C.C.No.3446 of 2020 has filed Crl.O.P.No.6553 of 2021.

2.The respondents have filed the private complaints against the petitioners for offence under Section 138 of the Negotiable Instruments Act in C.C.Nos.3446 & 3447 of 2020 before the learned Fast Track Court No.II, Allikulam, Chennai.

3.The gist of the case in C.C.No.3447 of 2020 is that the petitioners and the respondent are known to each other due to business dealings. On 05.07.2016 for urgent business needs, the petitioners had jointly borrowed an amount of Rs.10,00,000/- from the respondent through cheque drawn on ICICI Bank Limited, Chennai and it was agreed to repay the same with 18% interest. The 1st petitioner is the Firm and the 2nd and 3rd petitioners are its partners and they were looking after the day to day business affairs of the 1st petitioner Firm. Some payments were made as agreed upon earlier and as on 01.08.2020, the petitioners were due to the sum of Rs.15,77,968/-. After repeated reminders, the 3rd petitioner as authorized signatory in discharge of the part liability issued a cheque bearing No.165180, dated 04.08.2020 drawn on the Union Bank of India, Audiyappa Naicken Street, Chennai for Rs.12,50,000/- in favour of the respondent. When the cheque was presented for collection, the same was returned for the reason "Refer to Drawer". Thereafter, a statutory notice was issued and the same was received by the petitioners. Thereafter, they neither replied to the said notice nor paid the amounts due towards the cheque. Hence, the respondent filed the above complaint in C.C.No.3447 of 2020.

4.The gist of the case in C.C.No.3446 of 2020 is that the petitioners and the respondent are known to each other due to business dealings. On 12.02.2016 for urgent business needs, the petitioners had jointly borrowed an amount of Rs.10,00,000/- from the respondent through cheque drawn on the Standard & Chartered Bank, Chennai and it was agreed to repay the same with 18% interest. The 1st petitioner is the Firm and the 2nd and 3rd petitioners are its partners and they were looking after the day to day business affairs of the 1st petitioner Firm. Some payments were made as agreed upon earlier and as on 23.04.2018, the petitioners were due to the sum of Rs.7,00,000/- towards principal. After repeated reminders, the 3rd petitioner as authorized signatory in discharge of the part liability issued a cheque bearing No.165179, dated 03.08.2020 drawn on the Union Bank of India, Audiyappa Naicken Street, Chennai for Rs.7,50,000/- in favour of the respondent. When the cheque was presented for collection, the same was returned for the reason

"Refer to Drawer". Thereafter, a statutory notice was issued and the same was received by the petitioners. Thereafter, they neither replied to the said notice nor paid the amounts due towards the cheque. Hence, the respondent filed the above complaint in C.C.No.3446 of 2020.

5.The contention of the petitioners in both the cases is that the 2nd petitioner is not a signatory to the cheque in dispute and hence, the complaint is not maintainable against him. For this preposition, the learned counsel for the petitioners relied upon the Judgments of the Hon'ble Apex Court in the cases of "Alka Khandu Avhad Versus Amar Symprasad Mishra & Another in Crl.A.No.258 of 2021 and Krishnan Lal Chawla & Others Versus State of Uttar Pradesh and another in Crl.A.No.283 of 2021". In view of the same, the trial Court ought not to have taken the cognizance against the 2nd petitioner for the mere reason that he is the partner of the 1st petitioner Firm.

6.The learned counsel for the petitioners argued that the provision of Section 138 of the Negotiable Instruments Act, does not speak about the joint liability. If a person is liable to pay the debt jointly, he cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque. Here the 2nd petitioner is neither signatory nor joint account holder of the 1st petitioner partnership firm. He further submitted that the cheques were issued for security which had been wrongly projected as though issued in discharge of liability and assailed the above two petitions. Hence, he prayed for quashing the complaints.

7.On considering the submissions and on perusal of the materials, in the complaints, it has been mentioned that the 1st petitioner is the Partnership Firm and the 2nd and 3rd petitioners are its partners and they are looking after the day to day affairs and business of the 1st petitioner Partnership firm. Further, statutory notice has been issued to the petitioners which was received by them, neither made payment nor sent any reply.

8.The trial Court on considering the materials had taken the complaints on file and finding prima facie case, issued summons to the petitioners. Further, as per Section 141 of the Negotiable Instruments Act, every person at the time of offence committed who was incharge and responsible for the conduct of business of the company/firm are deemed to be guilty of the offence and liable to be prosecuted. The citations referred by the learned counsel for the petitioners pertains to the cheque which has been issued in the individual capacity and not in the name of the Firm. From perusal of the copy of the cheque, it is seen that the cheques have been issued in the name of 1st

petitioner Firm.

9. Thus, the grounds that have been raised by the learned counsel for the petitioners are purely factual in nature and this Court cannot go into the same in exercise of its jurisdiction under Section 482 of Cr.P.C. It is left open to the petitioner to raise these grounds before the trial Court and the trial Court shall consider the same on its own merits and in accordance with law. The counsel for the petitioners sought exemption of the petitioners' appearance before the trial Court.

10. The Hon'ble Apex Court in the case of "Bhaskar Industries Limited Versus Bhiwani Denim & Apparels Ltd. and others reported in 2001 SCC (Cr1) 1254" held that "in the cases involving offence under Section 138 of the Negotiable Instruments Act, if it appears to the Court that personal attendance may result in enormous hardship and cost to an accused, the Court may dispense with his personal attendance either throughout or at any particular stage of the proceedings, after taking an undertaking from him that he would not dispute his identity as the Court and he would have no objection in taking evidence in his absence. Main concern of the Court is administration of criminal justice and for that purpose the Court proceedings should register progress. However, discretion to dispense with the personal appearance should be exercised in rare cases due to distance or any physical disability or other good reasons, in the interest of justice." By following the same, the trial Court to pass appropriate order if such petition under Section 205 Cr.P.C., is filed.

12. In view of the above, this Court finds that the Quash Petitions does not merit consideration and the same are, accordingly, dismissed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Fast Track Court No.II,
Allikulam.

+2cc to Mr.Thirumalai, Advocate, Sr.22248

CRL.O.P.Nos.6545 & 6553 of 2021

GPL (CO)
baf 12/05/2021



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