IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

CORAM:

The Hon'ble Mr.Justice Krishnan Ramasamy

Crl.O.P.No.7532 of 2017
and
Crl.M.P.No.5454 of 2017

1. M/s. V.R.Textiles Pvt. Ltd.,
rep. by its Director,
Mrs.R.Vimala
Nallur, Punjai Puliampatti,
Sathy Taluk, Erode District- 638 459.

2. Mrs.R.Vimala
Director,
M/s. V.R.Textiles Pvt. Ltd.,
Nallur, Punjai Puliampatti,
Sathy Taluk,
Erode District- 638 459.

3. R.Santosh
S/o.Radhakrishnan,
Director,
M/s. V.R.Textiles Pvt. Ltd.,
Nallur, Punjai Puliampatti,
Sathy Taluk, Erode District- 638 459.

...Petitioners

Vs

1.M/s. Gnanambikai Mills Ltd.,
Rep. by R.M.Ramakrishnan
AGM Administration & Finance,
Registered Office at
Alankar Building, IIIrd Floor,
551, DB Road, R.S.Puram,
Coimbatore – 641 002.

..Respondents

Prayer : Petition filed under Section 482 of Code of Criminal Procedure to call for the records in C.C.No.212 of 2016 on the file of the Judicial Magistrate No.II, Coimbatore.

For Petitioners: Mr.R.Karthikeyan

For R1 : Mr.C.Arun Kumar

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.212 of 2016, on the file of the Judicial Magistrate, No.II, Coimbatore.

2. The petitioners 1 to 3 herein have been arrayed as accused Nos.1 to 3 in the above said case.

3. The case of the respondent/complainant is that, the fourth accused and the first petitioner-Company entered into an agreement, as per the terms of the said agreement, the fourth accused undertook to clear the dues of the first petitioner-Company to the complainant, and accordingly, the fourth accused issued a cheque, and when the same was presented for encashment, it was dishonored. The cheque was issued to the complainant along with first petitioner's Covering letter, therefore, the first petitioner was impleaded in the capacity as Company and other two persons, being the Directors of the Company, they along with the fourth accused, are jointly and severally liable to pay the cheque amount. Hence, the aforesaid case was filed against the petitioners and fourth accused for offence under Sections 138, 141 and 142 of Negotiable Instruments Act, 1881, (hereinafter, referred to as 'N.I.Act') and this Petition is filed to quash the said proceedings, as already stated supra.

4. The learned counsel appearing for petitioners has submitted that, it is true that the first petitioner-Company is indebted to the respondent/complainant and said liability was undertaken by the fourth accused to be cleared on and behalf of the first petitioner-Company and the fourth accused issued a cheque to clear the Company's liability. The instrument, in question was issued in the individual capacity of the fourth accused. The learned counsel submitted that, once the liability was undertaken by the fourth accused, the question of clearing the said debt by the Company does not arise. Even assuming there is any dispute with regard to the liability of the first petitioner-Company to pay the debt to the complainant, the same can be adjudicated only before the Civil Forum in terms of the agreement entered into between the first petitioner-Company and the fourth accused. The petitioners, having not issued any cheque, or signatory to the cheque, and further, not being the Directors of the Company as on the date of issuance of the cheque, the complaint filed against them is not sustainable. Therefore, the learned counsel contended that the case in C.C.No.212 of 2016, is liable to be quashed insofar as the petitioners herein are concerned.

5. Per contra, the learned counsel for the respondent would submit that the liability of the first petitioner-Company

was undertaken to be cleared by the fourth accused, and the cheque was issued by the fourth accused for and behalf of the first petitioner-Company and the said cheque was forwarded with a covering letter of the first petitioner-Company, and therefore, the first petitioner-Company is liable, and the second and third petitioners, being the Directors of the first petitioner-Company, they are also jointly and severally liable to pay the amount covered under the cheque. Therefore, the learned counsel prayed that the present petition is liable to be dismissed.

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

7. It is an admitted fact that the first petitioner-Company is liable to pay certain amounts to the respondent/complainant. In fact, there was an agreement entered into between the first petitioner-Company and the fourth accused, whereby, the fourth accused undertook to discharge the liability of the first petitioner, and to clear the same, the fourth accused also issued a cheque in his individual capacity in favour of the respondent/complainant. It would be pertinent to mention here that the undertaking given by the fourth accused, was in his individual capacity to clear the dues of the first petitioner-Company. That apart, the cheque was signed only by the fourth accused, and the same was not issued in the name of the first petitioner-Company and signed by any of the Directors of the Company, and that the petitioners cannot be made liable.

8. It is a settled legal position that when the cheque was issued by the drawer in favour of a person, in his individual capacity, the drawer of the cheque is responsible for the payment of the cheque amount. Only in the event, the cheque was issued in the name of the first petitioner-Company or by the petitioners as authorized signatories, both the Company and the authorized signatories can be made liable and consequently, in the case of dishonor, prosecution can be launched against them.

9. In the present case, the first petitioner-Company has not issued the cheque. One of the guarantors, who is the fourth accused issued the cheque, that too, in his individual capacity. When such being the position, certainly, the fourth accused can be prosecuted, and if at all, if there is any liability, in terms of the agreement, the said dispute would be only civil in nature and the same can be agitated by the respondent/complainant against the petitioners before the Civil Court, in accordance with law. Ignoring the said remedies, the petitioners are wrongly arrayed as accused 1 to 3 in C.C.No.212 of 2016 before the Courts below, which is legally not

sustainable.

10. In fine, this Court is of the considered view that the proceedings initiated against the petitioners are not maintainable and liable to be quashed.

11. Accordingly, this Criminal Original Petition is allowed, the proceedings in C.C.No.212 of 2016, are quashed insofar as the petitioners herein are concerned. In case, the respondent/complainant is desirous of seeking remedy before the Civil Court, as the dispute appears to be civil in nature, he is at liberty to pursue such remedy. So far as the fourth accused is concerned, the learned Judicial Magistrate No.II, is directed to complete the trial and dispose of the proceedings in C.C.No.212 of 2016, within a period of eight months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

sd

To

1. The Judicial Magistrate No.II,
   Coimbatore

+1cc to Mr.C.Arun Kumar, Advocate, S.R.No.55919
+1cc to Mr.R.Karthikeyan, Advocate, S.R.No.56005

Crl.O.P.No.7532 of 2017

AD(CO)
SB(23/11/2021)