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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2021

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NOS.11429, 4865 & 7699 OF 2017

&

CRL.M.P.NOS.3631, 5256, 7505, 7506 5566 & 5567 OF 2017

CRL.O.P.NO.11429 OF 2017

1. M/s.Sri Vari Ply Boards Private Limited,
14/6, 4th Street, Cooperative Colony,
Metupalayam - 641 301
2. Mr.C.Senivasan,
Managing Director & Guarantor of
M/s. Srivari Ply Boards Pvt. Ltd.,
New No.14/6, 4th Street,
Co-operative Colony,
Metupalayam - 641 301.
3. Smt.C.Kalavathy,
Director & Guarantor of
M/s.Srivari Ply Boards Pvt. Ltd.,
W/o.S.Chocklingam, New No.14/6,
4th Street, Co-operative Colony,
Metupalayam - 641 301.

... Petitioners/Accused
in all Crl.OPs

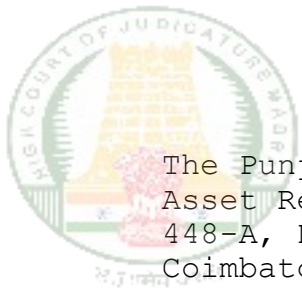
Versus

The Punjab National Bank,
Asset Recovery Management Branch,
448-A, Dr.Nanjappa Road,
Coimbatore - 641 108,
Represented through its
Authorised Officer, Mr.D.Devanbu.

...Respondent/Complainant
in Crl.O.P.No.11429 of 2017

The Punjab National Bank,
Asset Recovery Management Branch,
448-A, Dr.Nanjappa Road,
Coimbatore - 641 108,
Represented through its
Authorised Officer, Sri.R.Narasimhan.

... Respondent/Complainant
in Crl.O.P.No.4865 of 2017



The Punjab National Bank,
Asset Recovery Management Branch,
448-A, Dr.Nanjappa Road,
Coimbatore - 641 108,
Represented through its Authorised Officer,
Sri.R.Narasimhan.

... Respondent/Complainant
in Crl.O.P.No.7699 of 2017

PRAYER IN CRL.O.P.NO.11429 OF 2017:-

Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records pertaining to C.C.No.64 of 2017 on the file of Judicial Magistrate No.II, Coimbatore and quash the same.

PRAYER IN CRL.O.P.NO.4865 OF 2017:-

Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records pertaining to C.C.No.616 of 2016 on the file of Judicial Magistrate No.II, Coimbatore and quash the same.

PRAYER IN CRL.O.P.NO.7699 OF 2017:-

Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records pertaining to C.C.No.102 of 2017 on the file of Judicial Magistrate No.II, Coimbatore and quash the same.

For Petitioners .. Mr.B.Nedunchezhiyan
In all CRL.OP's

For Respondent .. Mr.R.Umasuthan
In all CRL.OP's

C O M M O N O R D E R

These Criminal Original Petitions have been filed to quash the proceedings initiated by the respondent under Section 138 of the Negotiable Instruments Act, 1881.

2. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondent.



3. The complaints indicate that the petitioners herein have availed a loan from the complainant Bank and issued cheques in the name of Srivari Ply Boards Pvt. Ltd., for Rs.50,000,000/-, 4,30,00,000/- and Rs.4,30,00,000/- The said Srivari Ply Boards Pvt. Ltd., endorsed the cheque in favour of the complainant as holder in due course. Learned counsel for petitioners denied the capacity of complainant as holder in due course. According to him, there is no endorsement in the cheque and therefore, the complaint is not maintainable. It is his further contention that already proceedings under SARFAESI Act have been initiated by the Bank and therefore, the proceedings under Section 138 of the Negotiable Instruments Act are not maintainable.

4. Heard the learned counsel for the respondent on the above submissions.

5. This Court is of the view that the very submission made by learned counsel for the petitioners with regard to the position of the complainant as "holder in due course" is a matter of evidence and this Court cannot make a roving enquiry. Furthermore, is there any valid endorsement or not is also a matter of evidence. This Court is also of the view that the pendency of proceedings under SARFAESI Act is not a bar to continue the proceedings under Section 138 of the Negotiable Instruments Act. Therefore, it is for the petitioner to raise all his defence before the trial Court. I do not find any ground to quash the proceedings and these Criminal Original Petitions are liable to be dismissed.

Accordingly, these Criminal Original Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed. However, the trial Court shall dispose of the cases in C.C.No.64 of 2017, C.C.No.616 of 2016 and C.C.No.102 of 2017 within a period of six months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gba/gpa



To

The Judicial Magistrate No.II,
Coimbatore.

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CRL.O.P.NOS.11429, 4865 & 7699 OF 2017
& CRL.M.P.NOS.3631, 5256, 7505, 7506,
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PM(CO)
PBS/07/12/2021