IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.12.2021

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.29203 of 2017, 4920, 7356, 4377, 4919
& 4378 of 2018 and
Crl.M.P.Nos.16507, 16508 of 2017
& Crl.M.P.Nos.3810, 3811, 2444,
2445,2446, 2447, 2056 and 2057 of 2018

1. Sree Balaji Spinning Mills
Rep. By its Proprietor M.Anandakumar
No.9/5, Priyam Arcade
G.N.Mills Post
Coimbatore - 641 029 ...1st Petitioner in all Crl.OPs / Accused

2. M.Anandakumar
S/o.B.Madhaiyan
...2nd Petitioner in Crl.O.P.No.29203 of 2017 4920, 7356, 4377, & 4378 of 2018 / Accused

3. A.Banurekha
W/o.Anandkumar ...2nd Petitioner in Crl.O.P.No.4919 of 2018 3rd Petitioner in Crl.O.P.Nos.29203 of 2017, 4920, 4377, & 4378 of 2018 / Accused

Versus

M/s.Reliance Capital Ltd.,
Rep. By its Legal Manager
Mr.R.Kumaran
No.10A, Haddows Road
Nungambakkam
Chennai - 600 006 ...Respondent / Complainant in all Petitioners

Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records and quash the proceedings in C.C.No.1069 of 2017, 301/2017, 1064/2017, 5138/2017, 1895/2017, 1923/2017 respectively on the file of the learned XVIII Metropolitan Magistrate Court, Saidapet, Chennai..

In all Petitioners

For Petitioners ... Mr.A.R.Suresh
For Respondent ... Mr.K.B.Vivekanandhan

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings initiated against the petitioners for the offence under Section 138 of the Negotiable Instruments Act.

2. The crux of the allegation against the petitioners is that they borrowed a loan by executing an agreement and promised to repay the loan as stipulated in the loan agreement through auto debit /ECS with their bank i.e., Indian Overseas bank, Kaundampalayam branch, Coimbatore. Thereafter, on 02.01.2017 when the first installment fell due, the same was dishonoured for insufficient funds and hence, the proceedings have been initiated under Section 138 of the Negotiable Instruments Act.

3. It is submitted by the learned counsel for the petitioners that the dishonour of Auto Debit is governed under the Payment and Settlement System Act, 2007, but the complaint has filed under Section 138 of the Negotiable Instruments Act and therefore, the complaint itself is not maintainable in the eye of law and the same has to be quashed.

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

5. It is relevant to note that though the ECS is governed by payment and settlement Systems Act, it is in pari materia of Section 138 of Negotiable Instruments Act. Section 25 of the Payment and Settlement Systems Act reads as follows:

> '25. (1) Where an electronic funds transfer initiated by a person from an account maintained by him cannot be executed on the ground that the amount of money standing to the credit of that account is insufficient to honour the transfer instruction or that it exceeds the amount arranged to be paid from that account by an agreement made with a bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the electronic funds transfer, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the electronic funds transfer was initiated for payment of any amount of money to another person for the discharge, in whole or in part, of any debt or other liability;

(b) the electronic funds transfer was initiated in accordance with the relevant procedural guidelines issued by the system provider;

(c) the beneficiary makes a demand for the payment of the said amount of money by giving a notice in writing to the person initiating the electronic funds transfer within thirty days of the receipt of information by him from the bank concerned regarding the dishonour of the electronic funds transfer; and

(d) the person initiating the electronic funds transfer fails to make the payment of the said money to the beneficiary within fifteen days of the receipt of the said notice.

(2) It shall be presumed, unless the contrary is proved, that the electronic funds transfer was initiated for the discharge, in whole or in part, of any debt or other liability.

(3) It shall not be a defence in a prosecution for an offence under sub-section (1) that the person, who initiated the electronic funds transfer through an instruction, authorisation, order or agreement, did not have reason to believe at the time of such instruction, authorisation, order or agreement that the credit of his account is insufficient to effect the electronic funds transfer.

(4) The Court shall, in respect of every proceeding under this section, on production of a communication from the bank denoting the dishonour of electronic funds transfer, presume the fact of dishonour of such electronic funds transfer, unless and until such fact is disproved.

(5) The provisions of Chapter XVII of the Negotiable Instruments Act, 1881 shall apply to the dishonour of electronic funds transfer to the extent the circumstances admit. Explanation — For the

purposes of this section, "debt or other liability" means a legally enforceable debt or other liability, as the case may be.'

6. Sub-calause (5) of Section 25 of the Act makes it clear that provisions of Chapter XVII of the Negotiable Instruments Act applies to ECS transfer. Chapter XVII of the Negotiable Instruments Act deals with penalties in case of insufficient funds in the account. Initiation of complaint condition set out in both the acts are similar. Applicability of the Negotiable Instruments Act is also specifically provided in the Payment and Settlement Systems Act.

7. In such view of the matter, the contention that the proceedings initiated under the Negotiable Instruments Act cannot be maintainable is not sustainable and this Criminal Original Petition is liable to be dismissed.

Accordingly, this Criminal Original Petition is dismissed. The petitioner is directed to appear before the trial Court regularly and the trial Court shall dispose of the cases 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

gpa
To
1. The XVIII Metropolitan Magistrate Court
Saidapet, Chennai.

2. The Public Prosecutor
Madras High Court
Chennai.

+1cc to Mr.K.B.Vivekanandhan, Advocate, S.R.No.65534

Crl. O.P. No.29203 of 2017, 4920, 7356, 4377, 4919 & 4378 of 2018 and
Crl.M.P.Nos.16507, 16508 of 2017
& Crl.M.P.Nos.3810, 3811, 2444,
2445,2446, 2447, 2056 and 2057 of 2018

SR[co]
NSK 30/12/2021