IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.03.2022

PRONOUNCED ON : 18.03.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.Nos.23507 & 23508 of 2016
and
Crl.M.Ps.11015 & 11017 of 2016

1. Srinivasha Fashions Private Limited,
Rep by its Managing Director,
Coppa V.Raveendran,
Having office at 1A, Regency Apartments,
No.5, 1st Floor, Nungambakkam High Road,
Chennai - 600 034.

2. Coppa V.Raveendran,
Managing Director of Srinivasha
Fashions Private Limited,
Having office at 1A, Regency Apartments,
No.5, 1st Floor, Nungambakkam High Road,
Chennai - 600 034.

3. Vijayalakshmi Raveendran,
Director of Srinivasha Fashions Private Limited,
Having office at 1A, Regency Apartments,
No.5, 1st Floor, Nungambakkam High Road,
Chennai - 600 034.

4. Varun,
Director of Srinivasha Fashions Private Limited,
Having office at 1A, Regency Apartments,
No.5, 1st Floor, Nungambakkam High Road,
Chennai - 600 034.

... Petitioners/accused in both Crl.O.P.s

Vs.

Nahar Industrial Enterprises Limited,
Focal Point,
Ludhiyana - 141010(Punjab)
and its branch office at 212, Cochrane basin road,
Chennai - 600 021.

... Respondent/Complainant in both Crl.O.P.s

COMMON PRAYER: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records connected with the C.C.Nos.6543 & 6544 of 2015 respectively on the file of the I Fast Track Court, Egmore, Chennai and quash the same.

IN BOTH CRL.OPs

For Petitioners : Mr.Y.Kaja Navas

For Respondent : Mr.U.Chandramouli for M/s. King and partridge

COMMON ORDER

These Criminal Original Petitions have been filed to call for the records connected with the C.C.Nos.6543 & 6544 of 2015 respectively, on the file of the I Fast Track Court, Egmore, Chennai and quash the same.

2.The respondent/complainant filed both the cases for the offences punishable under Section 138 r/w Section 141 of Negotiable Instruments Act 1881.

3.The allegations common to both complaints and separately, in brief, are as follows:

The respondent/complainant is a public limited company. The first petitioner is a private limited company. The second petitioner is its Managing Director, the third and the fourth petitioners are its Directors. The petitioners 2 to 4 are in control and management of the day today affairs of the first petitioner company. The respondent/complainant entered into a contract for supply of cotton fabric vide invoice No. NF 931140 dated 3.11.2014 for Rs.6,09,108/-, Invoice No.NF 931141 dated 3.11.2014 for Rs.2,90,343/-, Invoice No.NF 931142 dated 3.11.2014 for Rs.8,76,100/- Invoice No.NF 931438 dated 7.11.2014 for Rs.1,00,729/-, Invoice No.NF 937712 dated 28.1.2015 for Rs.4,12,750/-, Invoice No.NR 935005 dated 24.12.2014 for Rs.4,42,500/-, Invoice No. NR 934440 dated 16.12.2014 for Rs.2,00,432/- Invoice No.NF 932945 dated 27.11.2014 for Rs.28,350/- Invoice No.NF 932759/- dated 25.11.2014 for Rs.2,63,900/- Invoice No.NF 937032 dated 17.1.2015 for Rs.1,74,570/- with the first accused.

4. Pursuant to the supply of the cotton fabric vide the

aforesaid invoices, the petitioners issued a cheque bearing No.798097, dated 20.12.2014 for Rs.20,91,858/- drawn on The Corporation Bank, Whites Road, Mount Road Branch, Chennai - 600 014 in C.C.No.6543 of 2015. In C.C.No.6544 of 2015, three cheques for a sum of Rs.10,50,870/- were issued as detailed below:

i. Cheque bearing No.804657 dated 10.03.2015 for Rs.4,07,938/- (Rupees Four Lakhs Seven Thousand Nine Hundred and Thirty Eight Only) drawn on the Corporation Bank, Whites Road, Mount Road Branch, Chennai - 600 014.

ii. Cheque bearing No.804584 dated 2.03.2015 for Rs.4,42,500/- (Rupees Four Lakhs Forty Two Thousand Five Hundred only) drawn on the Corporation Bank, Whites Road, Mount Road Branch, Chennai - 600 014.

iii. Cheque bearing No.804836 dated 26.01.2015 for Rs.2,00,432/- (Rupees Two Lakhs Four Hundred and Thirty Two only) drawn on the Corporation Bank, Whites Road, Mount Road Branch, Chennai - 600 014.

5. The cheque for Rs.20,91,858/- was presented for collection on 20.12.2014, through the Corporation Bank, Anna Salai, Chennai. It was returned by a return memo dated 20.12.2014 with an endorsement 'funds insufficient'. It was again represented on 6.3.2015 and returned.

6. The cheques for Rs.4,07,938/- Rs.4,42,500/- and Rs.2,00,432/-were presented for collection on 10.03.2015, 02.03.2015 and on 26.01.2015 respectively, through the Corporation Bank, Anna Salai, Chennai and were returned on 11.03.2015, 07.03.2015 and 07.03.2015 respectively, with an endorsement 'funds insufficient'.

7. A statutory notice was issued on 24.03.2015 demanding the payment of cheque amounts within a period of 15 days from the receipt of the notice. The notice was received by the petitioners. The petitioners have not paid the amount. Therefore the complaints.

8. The learned counsel for the petitioners submitted that after the receipt of notice in C.C.No.6543 of 2015, petitioners have paid the cheque amount within the period specified in the legal notice. In support of his submission, he produced the copy of the accounts statement of the respondent. It is seen from the accounts statement for the period from 03.04.2015 to 04.04.2015 that a sum of Rs.20,91,858/- was paid by the

petitioners to the respondent. This amount was paid on 04.04.2015. Legal notice was issued on 24.03.2015, giving 15 days time to pay the aforesaid amount. Within the said period of 15 days, a sum of Rs.20,91,858/- was paid to the respondent by the petitioners. This payment was accepted by the learned counsel for the respondent. Therefore, this Court is of the considered view that there is no cause of action for instituting the case in C.C.6543 of 2015 against the petitioners and C.C.No.6543 of 2015 against the petitioners is quashed.

9. With regard to the case in C.C.No.6544 of 2015, it is submitted by the learned counsel for the petitioners that the petitioners and the respondent were engaged in a business dealing. Even now they are still continuing their business activities. The respondent received the post dated cheques from the petitioners as a security for the supply of the goods. Accordingly, petitioners have given the post dated cheques. Subsequently, petitioners requested the respondent to return their post dated cheques with an undertaking to pay the money through RTGS. There are written communications between the petitioners and the respondent in this regard. The petitioners had paid the cheque amounts covered by three cheques in C.C.No.6544 of 2015 with the other amounts payable to the respondent on 08.04.2015, 07.05.2015 and 08.07.2015. There is no amount payable to the respondent.

10. A perusal of the documents filed by the petitioners in support of their case shows that the amounts aforestated had been paid by the petitioners and they are reflected in the accounts statement of the respondent. The purchase order dated 13.11.2014 shows that the post dated cheques were issued by the petitioners to the respondent, obviously as a security for the supply of the goods. The e-mail correspondence from the petitioners to the respondent dated 12.02.2015 shows that the respondent undertook to return the cheques for which payment had been already made through RTGS. With regard to the impugned four cheques, it was mentioned in the e-mail that the cheque nos.798097, 804836, 804584 and 804657 would be returned once RTGS transfer is made. This E-mail was sent on 12.02.2015, even before the statutory notice was sent on 24.03.2015. It reinforces the claim of the petitioners that the cheques concerned in this cases had been given as a security for ensuring the payments due in the business transaction from the petitioners.

11. The learned counsel for the petitioners relied on the judgment reported in (2014) 12 SCC 539 (Indus Airways Private

Limited and others Vs. Magnum Aviation Private Limited and another) for the proposition that for the cheques issued as an advance payment for the purchase of the goods and subsequently dishonoured, criminal liability cannot be fastened and the accused cannot be prosecuted under Section 138 N.I.Act. It is observed as follows:

> 15.The above reasoning of the Delhi High Court is clearly flawed inasmuch as it failed to keep in mind the fine distinction between civil liability and criminal liability under Section 138 of the N.I. Act. If at the time of entering into a contract, it is one of the conditions of the contract that the purchaser has to pay the amount in advance and there is breach of such condition then purchaser may have to make good the loss that might have occasioned to the seller but that does not create a criminal liability under Section 138. For a criminal liability to be made out under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. We are unable to accept the view of the Delhi High Court that the issuance of cheque towards advance payment at the time of signing such contract has to be considered as subsisting liability and dishonour of such cheque amounts to an offence under Section 138 of the N.I. Act. The Delhi High Court has traveled beyond the scope of Section 138 of the N.I. Act by holding that the purpose of enacting Section 138 of the N.I Act would stand defeated if after placing orders and giving advance payments, the instructions for stop payments are issued and orders are cancelled. In what we have discussed above, if a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise and material or goods for which purchase order was placed is not supplied by the supplier, in our considered view, the cheque cannot be said to have been drawn for an existing debt or liability.

12. In the case before hand, it is not the case of the petitioners that the cheque were issued as an advance payment. It is claimed that the cheques were issued as a security. Of

course, there are materials to suggest that the cheques were issued as security. However, the petitioners did not deny their liability to pay the money to the respondent. Though it is claimed that a sum of Rs.5,91,000/- Rs.70,164/- and 21,52,662/- were paid on 08.04.2015, 07.05.2015 and 08.07.2015 respectively, all these payments have been made after the receipt of the statutory notice. Moreover, we cannot gather from these payments that they represent the cheque amounts, because these amounts represent the other amounts paid by the petitioners to the respondent in connection with the business transaction. Whether the amounts aforesaid represent the cheque amounts and the cheques were issued as a security or in connection with the existing liability, can be decided conclusively only from the oral and documentary evidence that have to be produced in this case. The reasons for the issuance of the cheques, alleged discharge of the liability are disputed facts are required to be decided only after recording the evidence. This Court cannot decide the disputed facts in this petition. Petitioners should participate in the trial of C.C.No.6544 of 2015 to establish their claim. Therefore this Court finds that C.C.No.6544 of 2015 cannot be quashed.

13. In the result, Crl.O.P.No.23507 of 2016 is allowed, the proceedings against the petitioners in C.C.No.6543 of 2015 is quashed and the Crl.O.P.No.23508 of 2016 is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

sli

To:

The I Fast Track Court,
Egmore, Chennai.

+2ccs to M/s.King & Partridge, Advocate, S.R.Nos.18641, 18642

+2ccs to M/s.Y.Kaja Navas, Advocate, S.R.No.18999

SPD(CO)
SU(31/03/2022)