IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.01.2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P.No.21021 of 2018
&
Crl.M.P.No.11411 of 2018

G.R.Surana,
S/o.Udairaj Surana. ... Petitioner/Accused 3

Versus

UCO Bank,
Represented by its Assistant General Manager,
Flagship Corporate Branch, PLA Rathina Towers,
Mount Road,
Chennai 600 006. … Respondent / Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records relating to C.C.No.1672 of 2016 on the file of the learned XIV Metropolitan Magistrate and Fast Track Court No.2, Egmore at Alllikulam, Chennai 600 003 and quash the same so far as the petitioner/3rd Accused is concerned.

For Petitioner ... Mr.S.J.Jagadev
for M/s.P.V.Preeja

For Respondent ... Mr.R.Chandramohan

O R D E R

The Criminal Original Petition has been filed to quash the proceedings initiated under Section 138 of the Negotiable Instruments Act, 1881.

2.The allegation in the complaint indicates that the first accused is a Company and the other accused persons namely A2 to A5 are the Managing Director and Directors of the Company and they are also aware of the day-to-day affairs of the Company. The accused persons, in the usual course of their business, availed various financial credit facilities from the respondent/

Bank including opening of Letter of credit for supply of goods and raw materials from M/s.Sri Balaji Khem Products. The Letter of credit was obtained for a sum of Rs.1,58,00,000/- (Rupees One Crore Fifty Eight Lakhs Only) and Letter of credit for 90 days was issued in favour of the accused on 15.07.2015. In terms of the Letter of credit, the accused was required to pay a total sum of Rs.1,58.00,000/- only, which the accused did not pay within 90 days. Towards, the said due, the accused gave a cheque dated 07.07.2015. The complainant/Bank presented the cheque for collection and the same was returned as "account closed". Thereafter, the complainant issued a statutory notice to all the accused persons, intimating them about the dishonour of the cheque. Since the accused did not make the payment, the complainant/Bank has initiated the prosecution in C.C.No.1672 of 2016 before the XIV Metropolitan Magistrate Court, Egmore, Chennai under Sections 138 and 142 of Negotiable Instruments Act, 1881.

3. The learned counsel for the petitioner submitted that the petitioner herein/A3 resigned from the first accused/Company, even prior to the issuance of the cheque and opening of the Letter of Credit. He further submitted that the petitioner herein was the non-executive Director of the first accused/Company. Further, Form DIR-12 filed along with the typed set of papers, proves the fact that he had resigned prior to the issuance of the cheque and therefore, he cannot be prosecuted. He further submitted that there is no specific averment against the petitioner in the complaint and hence, this complaint is not maintainable.

4.In support of his submissions, the learned counsel for the petitioner placed reliance on the judgment of the Gujarat High Court in the case of Dr.Rajan Sanatkumar Joshi Vs Rajnikant Govindlal Shah and Another reported in 2007 CRI.L.J. 2318. He further relied upon the judgment of the Hon'ble Supreme Court in the case of S.M.S.Pharmaceuticals Ltd Vs Neeta Bhalla and Another reported in AIR 2005 SC 3512.

5. The learned counsel for the respondent submitted that, in similar case, the defence raised against the petitioner herein/A3 before this Court was dismissed, vide order dated 23.10.2018 in Crl.O.P.No.24740 of 2018. Further, he has submitted that, whether the petitioner/A3 resigned prior to the issuance of cheque or availed loan facility, is a disputed fact and the same cannot be considered by this Court. Therefore, merely on the basis of some papers issued by the Ministry of

Corporate Affairs, without any authentication, those documents cannot be relied upon. He further submitted that, in the very alleged resignation letter, the petitioner stated that he is the Executive Chairman of the first accused/Company and he resigned from the first accused/Company on 29.04.2015, however, Form DIR-12 was filed before the Registrar of Companies only on 08.04.2016. The cheque got dishonoured on 07.07.2015. Hence, submitted that there are sufficient averments against the petitioner and he is liable for the prosecution of the offence.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent and also perused the materials available on record.

7. As rightly submitted by the learned counsel for the respondent, that the documents themselves are disputed and merely because the submissions are made before this Court, the same cannot be relied upon, without proving the authentication as required under law. The documents that have to be proved before the Court for reliance. Therefore, the contention that the petitioner has resigned much prior to the issuance of alleged cheque dated 07.07.2015 or not to be seen only in trial Court. Further, in the very resignation letter, he has stated that he is the Executive Chairman of the first accused/Company at the earlier point of time. Therefore, the facts which are disputed by the other side cannot be dealt with by this Court, as it is for the petitioner to establish the same before the trial Court.

8. This Court is of the view that the petitioner is one of the Executive Directors in the affairs of the Company. The respondent-Bank pleaded that the cash credit facility has been extended from time to time to the accused persons, who are in-charge of the Company. Merely on the ground that in the pleadings with regard to role played by each of the Directors, is not stated as strictly as required under law, the entire proceedings cannot be quashed. It is open to the petitioner to establish the fact that he was not in-charge of the Company at the earlier point of time, and those things have to be established only before the trial Court. Hence, this Court does not find any merit in this Criminal Original Petition and the same is liable to be dismissed.

9. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

10.At this juncture, the learned counsel appearing for the petitioner seeks some indulgence to dispense with the personal appearance of the petitioner before the trial Court. Hence, the personal appearance of the petitioner, before the trial Court, is dispensed with. The trail Court shall proceed with the trial and complete the same as expeditiously as possible on its own merits.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

ms/nsa

To

The XIV Metropolitan Magistrate,
Fast Track Court No.2,
Egmore at Alllikulam,
Chennai 600 003.

+1cc to M/s.P.V.Preeja, Advocate Sr.5790
+1cc to Mr.R.Selvakumar, Advocate Sr.5839

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