IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2022

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.O.P.Nos.8605,8597,10332,12104,10669 & 12096 of 2019
and
CRL.M.P.Nos.4590,4581,5349,5485,6277 & 6266 of 2019

Crl.O.P.No.8605 of 2019:

Rajarathanam Balasubramanian ...Petitioner/Accused-3

Vs.

M/s.Jindal Saw Limited,
3-G, Century Plaza, 560562
Teynampet, Chennai - 600 018.
Rep. by its Deputy Marketing Manager,
Mr.S.Karthick ...Respondent/Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the entire records, comprised in C.C.No.3827 of 2018, pending on the file of Learned Metropolitan Magistrate (FTC-I) at Egmore, Chennai and quash the same in so far as the Petitioner/Accused-3.

Crl.O.P.No.8597 of 2019:

Sri.Rajarathanam Balasubramanian (A-3) ...Petitioner/Accused-3

Vs.

M/s.Jindal Saw Limited,
3-G, Century Plaza, 560562
Teynampet, Chennai - 600 018.
Rep. by its Deputy Marketing Manager,
Mr.S.Karthick ...Respondent/Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the entire records, comprised in C.C.No.3826 of 2018, pending on the file of Learned Metropolitan Magistrate (FTC-I) at Egmore, Chennai and quash the same in so far as the Petitioner/Accused-3.

Crl.O.P.No.10332 of 2019:

1.Ashok Kumar Balasubramanian (A-4)
2.Achuthan Thazhathehil (A-5)
3.Raghunathan Nair Raman Nair (A-6)
...Petitioner/Accused-4 to 6

Vs.

M/s.Jindal Saw Limited,
3-G, Century Plaza, 560562
Teynampet, Chennai - 600 018.
Rep. by its Deputy Marketing Manager,
Mr.S.Karthick ...Respondent/Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the entire records, comprised in C.C.No.3826 of 2018, pending on the file of Learned Metropolitan Magistrate (FTC-I) at Egmore, Chennai and quash the same in so far as the Petitioner/Accused-4 to 6.

Crl.O.P.No.12104 of 2019:

B.Pattabhiraman(A-2) ...Petitioner/Accused-2

Vs.

M/s.Jindal Saw Limited,
3-G, Century Plaza, 560562
Teynampet, Chennai - 600 018.
Rep. by its Deputy Marketing Manager,
Mr.S.Karthick ...Respondent/Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the entire records, comprised in C.C.No.3826 of 2018, pending on the file of Learned Metropolitan Magistrate (FTC-I) at Egmore, Chennai and quash the same in so far as the Petitioner/Accused-2.

Crl.O.P.No.10669 of 2019:

1.Ashok Kumar Balasubramanian (A-4)
2.Achuthan Thazhathehil (A-5)
3.Raghunathan Nair Raman Nair (A-6)
...Petitioner/Accused-4 to 6

Vs.

M/s.Jindal Saw Limited,
3-G, Century Plaza, 560562
Teynampet, Chennai - 600 018.
Rep. by its Deputy Marketing Manager,
Mr.S.Karthick ...Respondent/Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the entire records, comprised in C.C.No.3827 of 2018, pending on the file of Learned Metropolitan Magistrate (FTC-I) at Egmore, Chennai and quash the same in so far as the Petitioner/Accused-4 to 6.

Crl.O.P.No.12096 of 2019:

B.Pattabhiraman (A-2) ...Petitioner/Accused-2

Vs.

M/s.Jindal Saw Limited,
3-G, Century Plaza, 560562
Teynampet, Chennai – 600 018.
Rep. by its Deputy Marketing Manager,
Mr.S.Karthick ...Respondent/Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the entire records, comprised in C.C.No.3827 of 2018, pending on the file of Learned Metropolitan Magistrate (FTC-I) at Egmore, Chennai and quash the same in so far as the Petitioner/Accused-2.

For Petitioners
in Crl.O.P.Nos.8605,8597
10332 & 10669 of 2019 : M/s.Vimal B.Crimson

For Petitioner
in Crl.O.P.Nos.12104
& 12096 of 2019 : Mr.B.Dhanaraj

For Respondent
in all petitions : No Appearance

C O M M O N O R D E R

M/s.Jindal Saw Limited, represented by its Deputy Manager -Marketing filed two private complaints under Section 138 of Negotiable Instruments Act, 1881 before the learned Metropolitan Magistrate (FTC-1),Allikulam, Egmore against M/s.G.B.Engineering Enterprises Private Limited and five others. Those complaints were taken on file in C.C.Nos.3826 of 2018 and 3827 of 2018 respectively.

2.The gist of the complaints under Section 138 of Negotiable Instruments Act, 1881 was that the 1st accused/company Mrs.G.B.Enterprises Private Limited, its Managing Directors, Directors and other Directors involved in the supply of materials like carbon steel, alloy steel, seamless pipes and tubes. The complainant company had failed to make payment to tune of Rs.30,10,80,617.05/-, as per the running account maintained by the complainant. The meeting was convened on 19.06.2017 in which on behalf of the 1st accused company, its Managing Director/second accused and the Director/third accused participated, confirming the outstanding dues payable to the complainant.

3.On repeated request to discharge the dues as a part payment of the outstanding dues, Cheque bearing No.540533 dated 29.11.2017 and Cheque bearing No.540534 dated 29.11.2017 for Rs.50,00,000/- drawn from the account maintained from the 1st accused company in State Bank of India, Thuvakudi Branch was issued. When the Cheques were presented for collection, it was returned with an endorsement "Refer to Drawer" along with the Cheque return Memo dated 26.12.2017 and Statutory Notice dated 24.01.2018 was issued to the 1st accused company and its Directors. A reply with various false, baseless and frivolous allegations was sent to the complainant on behalf of the 1st accused company. Thereafter, for each Cheque separate complaints filed. In the complaints, it is stated that the 1st accused company has issued the Cheque towards the part payment of its liability. The 2nd accused Mr.B.Pattabhiraman, being the Managing Director and signatory of the Cheque, the 3rd accused Mr.Rajarathanam Balasubramanian, 4th accused Mr.Ashokkumar Balasubramanian, 5th accused Mr.Achuthan Thazhathehil and 6th Accused Mr.Ragunathan Nair Raman Nair being the Directors of the 1st accused company are also in charge and responsible for the business and day to day affairs of the 1st accused company and they are fully aware of the issuance of the Cheques and the dishonour. Hence, for the Cheque issued by the 1st accused company, the accused 2 to 6 are vicariously liable.

4.These complaints are now sought to be quashed through these batch of Original petitions filed under Section 482 of Cr.P.C. The petitioners are B.Pattabhiraman, the 2nd accused in both cases, Rajarathinam Balasubramanian 3rd accused and Ashok Kumar Balasubramanian 4th accused in both the C.C.cases. The prayer sought in this quash petition is that the complainant has primarily suppressed a fact that the subject Cheque was presented thrice for collection, the last presentation was on 10.01.2018. Suppressing the third presentation, based on the 2nd representation dated 22.12.2017, the impugned complaint has been lodged with a malafied intention. From the complaint it can be seen that the complainant was aware of the fact that the bank account from which the subject Cheque was drawn was classified as NPA, that apart in the reply notice to the Statutory Notice dated 12.02.2018, the petitioner has specifically denied the liability stating that the undated Cheques signed and entrusted to the complainant for security purpose. Further due to economic slowdown and other factors , the 1st accused company has resorted to protection under Section 10 of the Insolvency and Bankruptcy Code 2016 R/2 Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 and obtained protection order dated 25.01.2018 from the National Company Law Tribunal (NCLT), Chennai, (CP/64)/(IB)/CB/2018.One Mr.R.Sundaram was appointed as Resolution Professional and therefore, after the matter is seized by the NCLT and Moratorium Commence Force. There cannot be any prosecution for the alleged dishonour of the Cheque issued on behalf of the company. The complainant was put to notice that Rajarathanam Balasubranian had already submitted his resignation on 06.11.2017 and the same has been recorded by the ROC, after he ceased to be the Managing Director of the 1st accused company. Despite the said fact which is admittedly within the knowledge of the complainant, the complaint was filed on 28.02.2018 much after the moratorium and against resigned Director. Therefore, the complaint is liable to be quashed.

5.This Court based on the records find that the Cheque was issued from the account maintained by the 1st accused company and the signatory of the Cheque is the 2nd accused. In the complaint, though it is stated that other accused actively participated in the affairs of the company and the 2nd and 3rd accused participated in the minutes of meeting dated 19.06.2017, from the list of documents, this Court finds that no document to show that there was a meeting held on 19.06.2017 and in which other Directors/accused participated.

6. That apart, the materials placed before this Court also indicates that Rajarathanam Balasubramanian, who is shown as 3rd accused in the complaint, resigned from his Directorship with effect from 06.11.2017 prior to the date of impugned Cheques that is 29.11.2017. Above all, from the impugned Cheques, it is obviously clear that the Cheque was presented for the 3rd time on 10.01.2018 but complaint is based on second presentation. No doubt, law permits the drawee or holder in due course can present the Cheque within the validity of the Cheques expired and there is no bar or restriction for representations of the Cheques within that time, but then, when a Criminal prosecution is lodged, a fair disclose of the fact is required to the Court to assess the criminality. More particularly, when the statutory presumption of liablity is against the accused.

7.In this case, the presentation of the Cheque for the 3rd time on 10.01.2018 and the suppression of the said fact in the complainant gains significance because, in the reply notice dated 12.02.2018, it has been specifically informed to the complainant that in view of the petition under Insolvency Bankruptcy Code, moratorium has been issued on 25.01.2008 and the entire affairs of the accused company been taken over by

Resolution Professional by name Mr.R.Sundaram.

8.The counsel appearing for the petitioner contended that on the date when the complaint was taken into cognizance by the Judicial Magistrate, the company has declared as NPA (Non-Performing Asset) and administration of the company been taken over by the Resolution Professional and that fact was admittedly known to the complainant. While so to avoid causing Statutory Notice to the Resolution Professional , who has taken charge of the affairs of the company, the impugned complaint has been filed based on the 2nd return of the Cheque as cause of action by suppressing the representation of the Cheque for the 3rd time. The cause of action what so ever accrued for initiating Criminal complaint based on the 2nd return dated 22.12.2017 has been superseded and there cannot be a complaint based on the 2nd return after representing the Cheque for the 3rd time.

9. This Court finds force in the submission made by the counsel for the petitioner. While, the benefit of limitation gets accrued to the complaints, if, they represent the Cheque for 2nd or 3rd time reckoning the cause of action from the date of return of the Cheque presented, same benefit should be extended to the accused. The complainant cannot choose the previous return for reckoning limitation or for cause of action to avoid causing Statutory Notice to the appropriate persons. When the fact that the affairs of the company has been taken over by the Resolution Professional made know to the complainant well before the representation of the complaint. The complaints against persons who are not administering the company on the date of complaint is abuse of process of law. Section 141 of the Negotiable Instruments Act, 1881, which say about vicarious liabilities on the Directors and the persons in charge of the company apart from the signatory of the Cheque. Ought to be applied properly and should not cause any inconvenience or injustice to persons not in charge of the company.

10.When there is enough material to show that Mr.Rajarathanam Balasubramanian, the petitioner in Crl.O.P.Nos.8597 and 8605 of 2019 was not the Director of the company or person in charge of the company on the date of issuance of the Cheque and the 1st accused company had already been brought under the scanner of IBC and its administration taken over by newly appointed Resolution Professional by DRT under the authority of law, no criminal prosecution can be launched against these petitioners for the Cheque issued under the name of the company under liquidation before the complaint taken cognizance and when the complainant had been informed about the proceedings before the DRT prior to filing of the complaint.

11. For the above said reasons, the petition filed for quash is allowed and all the Miscellaneous Petitions are disposed of accordingly.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

vm

To

The Metropolitan Magistrate (FTC-I)
Allikulam,Egmore,
Chennai.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

+4cc to M/s.Vimal B Crimson, Advocate, S.R.No.39518, 39517, 39519, 39521

+2cc to M/s.Vimal B Crimson, Advocate, S.R.No.39522, 39520 (27/07/2022)

Crl.O.P.Nos.8605,8597,10332,12104, 10669 & 12096 of 2019

SKM(CO)
RGA(18/07/2022)