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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. Nos.17954, 17976, 24110, 25561 & 25573 of 2018
and

Crl.M.P.Nos.9357, 9358, 9381, 9382, 13607, 13610, 14587,
14589, 14607 & 14608 of 2018

Crl.O.P.No.17954 of 2018

M/s. Nag Leathers Pvt. Ltd.,
rep. By its Managing Director
Mr. S.Chokalingam Pillai

...Petitioner/Accused

Versus

M/s. Muzain Hides,
Proprietor : Mr. S.K.Nazeer Ahmed,
rep. by his Power Agent
Mr. S. Rafeeqe Ahamed
R.S.Abdul Khadar Compound,
No.11, Bhavani Main Road,
Erode - 638 005.

...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records in pursuant to the criminal proceedings in S.T.C.No.200 of 2018 pending on the file of Court of Judicial Magistrate/ Fast Track Court -I, Erode and quash the same.

Crl.O.P.No.17976 of 2018

1. M/s.Nag India Pvt. Ltd.,
A Private Ltd. Company duly
rep. By its Managing Director,
Mr.S.Chockalingam Pillai
S/o. Subramani Pillai.
2. Mr.S.Chockalingam Pillai,
Managing Director : M/s. Nag India
Private Ltd.
S/o. Subramani Pillai



3. C. Jagdadeesh,
S/o.S.Chockalingam Pillai

...Petitioners/Accused 1 to 3

Versus

K.A. Shathik,
Proprietor : M/s.Taj Leathers
Represented by his son and
power agent :-
A.S.Mufeeth Ahamed,
S/o. K.A.Shathik
No.270, C/o. Erode Sathick Tannery,
Maravapalayam,
R.N.Pudur Post,
Erode - 638 005.

...Respondent/Complainant

PRAYER :Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records in pursuant to the criminal proceedings in S.T.C.No.344 of 2018 pending on the file of Court of Judicial Magistrate, Erode / Fast Track Court -II, Erode and quash the same.

Cr1.O.P.No.24110 of 2018

M/s. Nag Leathers Pvt. Ltd.,
rep. By its Managing Director
Mr. S.Chokalingam Pillai

...Petitioner/Accused

Versus

M/s. Dynamic Marketing
Partnership rep. by its Partners
1. Mrs. J.L.Sobhana
2. Mr. C.Narayanan
Partnership rep. by its Power of
Attorney Agent Mr. K.Suresh,
S/o. Subbarathina Pillay

...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records in pursuant to the criminal proceedings in S.T.C.No.219 of 2018 pending on the file of Court of District Munsif cum Judicial Magistrate at Ranipet and quash the same.

Cr1.O.P.No.25561 of 2018

1. M/s.Nag India Pvt. Ltd.,
A Private Ltd. Company duly
rep. By its Managing Director,
Mr.S.Chockalingam Pillai
S/o. Subramani Pillai.



2. Mr.S.Chockalingam Pillai,
Managing Director : M/s. Nag India
Private Ltd.
S/o. Subramani Pillai

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3. C. Jagdadeesh,
S/o.S.Chockalingam Pillai ...Petitioners/Accused 1 to 3

Versus

K.A. Shathik,
Proprietor : M/s.Taj Leathers
Represented by his son and
power agent :-
A.S.Mufeeth Ahamed,
S/o. K.A.Shathik
No.270, C/o. Erode Sathick Tannery,
Maravapalayam,
R.N.Pudur Post,
Erode - 638 005.

...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records in pursuant to the criminal proceedings in S.T.C.No.551 of 2018 pending on the file of Court of Judicial Magistrate / Fast Track Court -II, Erode and quash the same.

Cr1.O.P.No.25573 of 2018

1. M/s.Nag India Pvt. Ltd.,
A Private Ltd. Company duly
rep. By its Managing Director,
Mr.S.Chockalingam Pillai
S/o. Subramani Pillai.

2. Mr.S.Chockalingam Pillai,
Managing Director : M/s. Nag India
Private Ltd.
S/o. Subramani Pillai

3. C. Jagdadeesh,
S/o.S.Chockalingam Pillai ...Petitioners/Accused 1 to 3

Versus

K.A. Shathik,
Proprietor : M/s.Taj Leathers
Represented by his son and
power agent :-



A.S.Mufeeth Ahamed,
S/o. K.A.Shathik
No.270, C/o. Erode Sathick Tannery,
Maravapalayam,
R.N.Pudur Post,
Erode - 638 005.

...Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records in pursuant to the criminal proceedings in S.T.C.No.496 of 2018 pending on the file of Court of Judicial Magistrate / Fast Track Court -II, Erode and quash the same.

For Petitioner in
all CrI.O.P.s : Mr.T.P.Prabakaran

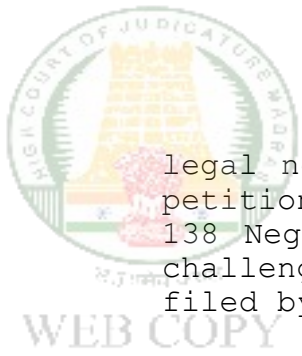
For Respondent in
all CrI.O.P.s : Mr.M.Guruprasad

C O M M O N O R D E R

These Criminal Original Petitions have been filed to quash the criminal proceedings in S.T.C.Nos. 200, 344, 219, 551 and 496 of 2018 on the file of Judicial Magistrate / Fast Track Court-I and Fast Track Court-I, Erode.

2. The case of the petitioners is that it is arrayed as one of the accused in cases pending before the Court of Judicial Magistrate, Erode/Fast Track Court-1 and before the Court of Judicial Magistrate, Erode/Fast Track Court-II, for the offences under Section 138, 141 and 142 of the Negotiable Instrument Act, 1881. The accused Company is running a leather business in the name and style of M/s.Nag India Pvt Ltd., As per the request of the petitioners' Company, the complainant Company agreed to supply the ''Wet Blue Cow Hides'' and supplied the same. During the course of business, the accused Company was due and payable to the respondent Company for the supply made. For which, the 2nd accused had issued various cheques on different dates for discharge of the debts arising out of supply. When the said cheques were presented in bank, it was returned and the same dishonoured by the complainant's Bank with an endorsement of ''Payment Stopped by the Drawers''. Therefore, the respondent has filed the complaints before the Court of Judicial Magistrate, Erode.

3.It is further alleged by the petitioners that the respondent has admittedly not issued any legal notice to the accused as prescribed under the provisions of Negotiable Instruments Act, however, in the complaint, it is stated that a



legal notice was duly served to all the Directors including the petitioners herein. Therefore, the complaint filed under Section 138 Negotiable Instrument Act, is legally unsustainable. Hence, challenging the said complaint, the present petition has been filed by the petitioners.

4. The learned counsel appearing for the petitioners would submit that the accused Company had issued a letter to the respondent through their counsel on 29.07.2017, stating that vide order dated 10.07.2017, issued by National Company Law Tribunal, Chennai Bench, the Corporate Insolvency Resolution Process against the accused Company has commenced and hence, the 2nd accused was unable to honor the post dated cheques in favour of the respondent Company. Further, the complainant has filed the complaint on 21.12.2017, before that on 10.07.2017, the NCLT, Chennai, had initiated insolvency proceedings against the accused Company. On 24.07.2017, a public announcement was issued by the Insolvency Resolution Professional, requesting all the financial creditors of the accused Company to submit their proof of claims and further, on the same day, the accused Company informed the respondent about the commencement of Corporate Insolvency Resolution Process and requested not to present the cheques. In spite of that, the complainant has presented the cheques for collection and filed the complaint as if the accused company failed to settle their debts. In view of the commencement of insolvency proceedings against the accused Company, the complainant is not legally entitled to file a complaint before the Trial Court.

5. Further, the learned counsel has drawn the attention of this Court to the decision of the Hon'ble Supreme Court in the decision reported in 2021 SCC Online SC 152 (P.Mohanraj and Others Vs. Shah Brothers Ispat Pvt., Ltd.,) and submitted that for the period of moratorium, no proceedings under Section 138 and 141 of the Negotiable Instrument Act, 1881 can be initiated against the corporate debtor, since there is a statutory bar for initiation of such proceedings. It is further alleged by the petitioners that in view of the commencement of insolvency proceedings against the 1st petitioner Company, the complainant is not legally entitled to file a complaint before the Trial Court. Therefore, the complaints filed against the petitioners are not maintainable and accordingly, he prays for allowing the present petitions.

6. The learned counsel appearing for the respondent fairly conceded that insofar as extension of the benefit of moratorium in respect of the 1st petitioner is concerned, he has no serious objection for quashment of the case in respect of the 1st petitioner Company. However, he vehemently opposed quashing of the case as against petitioners 2 and 3 and made a submission



that the petitioners 2 and 3 are liable to be proceeded against for their personal acts as per the aforesaid decision of the Hon'ble Supreme Court, cited by the learned counsel for the petitioners, wherein it has been categorically concluded that the moratorium provision contained in Section 14 of the Insolvency Bankruptcy Code, would apply only to corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instrument Act and, therefore, he prays for dismissal of this petition with respect to petitioners 2 and 3.

7. Heard rival submissions of both sides and also perused the materials available on record.

8. It is not in dispute that the cheques issued to the complainant's Company were dishonored with an endorsement 'Payment Stopped by the Drawers'. In that regard, the 1st petitioner Company had issued a letter to the respondent through their counsel stating about the initiation of insolvency process by National Company Law Tribunal (for short 'NCLT') against the 1st petitioner Company and due to which, the 2nd accused / 2nd petitioner was unable to honor the post dated cheques issued in favour of the respondent Company. In spite of the communication of the 1st petitioner Company regarding the insolvency process, the complainant has presented the cheques for collection, which was dishonored and thereby filed the complaint against the 1st petitioner Company.

9. Notwithstanding the above said fact, in the decision of P.Mohanraj (supra), the Hon'ble Supreme Court has, in the wake of declaration of moratorium by the Tribunal under the Insolvency and Bankruptcy Code, in paragraph no.103 of the said judgment, held as under:

'103. Since the Corporate debtor would be covered by the moratorium provision contained in Section 14 of the IBC, by which continuation of Section 138/141 proceedings against the corporate debtor and initiation of Section 138/141 proceedings against the said debtor during the corporate insolvency resolution process are interdicted, what is stated in paragraphs 51 and 59 in Aneeta Hada (supra) would then become applicable. The legal impediment contained in Section 14 of the IBC would make it impossible for such proceeding to continue or be instituted against the corporate debtor. Thus, for the period of moratorium, since no Section 138/141 proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Section 141(1) and (2) of the



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Negotiable Instrument Act. This being the case, it is clear that the moratorium provision contained in Section 14 of the IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act.''

10. From a perusal of the above, it is evident that there is a categorical finding recorded by the Apex Court that the moratorium provision contained in Section 14 of the Insolvency Bankruptcy Code, would apply only to corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instrument Act and thereby, it is clearly settled that the criminal liability of natural persons in case of complaint filed under Section 138 and 141 of the Negotiable Instrument Act, 1881 would survive, but would not be attracted against the company. The decision of the Hon'ble Supreme Court is squarely covers the case on hand.

11. In the case on hand, the insolvency process was initiated by NCLT on 10.07.2017 and moratorium has been declared under the Insolvency and Bankruptcy Code. Therefore, as held by the Hon'ble Supreme Court, the moratorium was only in respect of the corporate debtor and not in respect of the directors / management and therefore, the petitioners 2 and 3 as natural persons, are liable for prosecution. However, in view of declaration of moratorium by NCLT, the prosecution as against the company cannot be allowed to continue.

12. Therefore, this Court is inclined to quash the proceedings in respect of 1st petitioner and insofar as the petitioners 2 and 3 are concerned, this Court is of the opinion that the issue is a triable issue and it requires appreciation of evidence and this Court cannot decide the same in exercise of its jurisdiction under Section 482 of Criminal Procedure Code. It is left open to the petitioners 2 and 3 to raise all the grounds before the Court and the same shall be considered on its own merits and in accordance with law. Therefore, this Court is not inclined to interfere with the proceedings pending before the Court below.

13. For the reasons aforesaid, these Criminal Original Petitions are allowed in respect of 1st petitioner is concerned and the criminal proceedings in S.T.C.Nos. 200, 344, 219, 551 and 496 of 2018 on the file of Judicial Magistrate / Fast Track Court-I and Fast Track Court-I, Erode are quashed. However, in respect of petitioners 2 and 3, this petition is disposed of directing the trial court to dispose of cases as expeditiously as possible as per seniority of the case. The petitioners and



respondent are directed to co-operate with the trial court for the early completion of trial. Further, taking into consideration of the request as made by the learned counsel for the petitioners, their appearance before the trial court is dispensed with except for their appearance for the purpose of receiving the copy of the proceedings under Sec. 207 Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular reason, the presence of the petitioners is necessary, the trial court, at its wisdom, shall direct their appearance on those days. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rpp/gd

To

1. The Judicial Magistrate/Fast
Track Court-I,
Erode.
2. The Judicial Magistrate/Fast
Track Court-II,
Erode.

+2cc to Mr.T.P.Prabakaran, Advocate, S.R.No.146, 143

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.258

+1cc to Mr.R.Chitti Babu, Advocate, S.R.No.482 [10/06/2022]

CrI. O.P. Nos.17954, 17976, 24110,
25561 & 25573 of 2018
and
CrI.M.P.Nos.9357, 9358, 9381, 9382, 13607,
13610, 14587, 14589, 14607 &
14608 of 2018

PVS (CO)
RGA(27/01/2022)