

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.15219, 15223 & 15224 of 2022
and

Crl.M.P.Nos. 8532, 8523, 8524, 8526, 8528 & 8533 of 2022

1.M/s.Saalim Shoes (P) Ltd
Represented by its Managing Director
Mr.Arcot Mohammed Saalim
No.1-A, Regency Apartment, No.5, 1st Lane
Nungambakkam High Road, Chennai - 600 034
Factory at No.63/1, 63/2
Ammor Road, Manthangal
Ranipet, Ranipet District- 632 403
Tamil Nadu

2.Arcot Mohammed Saalim

3.Arcot Mohammed Aslam

4.Arcot Mohammed Ashfaque

..Petitioners/Accused in Crl.O.P.No.15219 of 2022

Versus

M/s.Vasavi Marketing
Represented by its Power Agent
Mr.R.Nagendra Prasad
Head Office
No.88/A, Vakkil Street
Ranipet, Walaja Taluk
Ranipet District

..Respondent/Complainant in
Crl.O.P.No.15219 of 2022

Abdul Wahab ..Petitioner/Accused in Crl.O.P.No.15223 of 2022

Versus

M/s.Vasavi Marketing
Represented by its Power Agent
Mr.R.Nagendra Prasad
Head Office
No.88/A, Vakkil Street
Ranipet, Walaja Taluk
Ranipet District

..Respondent/Complainant in
Crl.O.P.No.15223 of 2022

Shakvai Mumtaj Beham

..Petitioner/Accused in
Crl.O.P.No.15224 of 2022

Versus

M/s.Vasavi Marketing
Represented by its Power Agent
Mr.R.Nagendra Prasad
Head Office
No.88/A, Vakkil Street
Ranipet, Walaja Taluk
Ranipet District

..Respondent/Complainant in
Crl.O.P.No.15224 of 2022

Common Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the entire records in pursuant to the S.T.C.No.19 of 2021 pending on the file of Judicial Magistrate Court, Ranipet District.

For Petitioners : Mr.T.P.Prabakaran (in all cases)

COMMON ORDER

These Criminal Original Petitions have been filed seeking to quash the Chargesheet in S.T.C.No.19 of 2021 pending on the file of Judicial Magistrate Court, Ranipet District, for the offence under Section 138 read with Section 142 of Negotiable Instrument Act, 1881.

2.The present petitions have been filed to quash the cheque complaint in S.T.C.No.384 of 2020 mainly on the ground that the management of the petitioner company was taken over by the Corporate Debtor appointed by National Company Law Tribunal, Division Bench-I, Chennai and there was a moratorium under Section 14(1) of the Insolvency and Bankruptcy Code, 2016. Therefore, it is submitted that no complaint is maintainable as against the petitioner company and its Directors.

3.At the outset, I am unable to persuade to the submission of the learned counsel. Hon'ble Apex Court in the case of P. Mohanraj and Others vs. Shah Brothers Ispat Pvt. Ltd., reported in [2021 SCC Online SC 152], after dealing with various judgements of the Apex Court in paragraph 103 held as follows:

"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 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.''

As the moratorium applies to the Corporate Debtor, no proceedings under 138/141 can continue or be initiated because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Section 141(1) and (2) of the 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.

4. In such a view of the matter, the petitioners being the directors of the petitioner company, have to be prosecuted as per the above judgment.

5. Such view of the matter, the complaint as against the the petitioner company alone is quashed. In respect of others, the application to quash is dismissed and at this stage, the learned counsel for the petitioners citing the age of the petitioners namely Mr. Arcot Mohammed Saalim and Mrs. Shakvai Mumtaj Beham seeks exemption of personal appearance before the Trial Court. Considering the same, personal appearance of the above mentioned petitioners before the Trial Court is dispensed with, except when called for in required circumstances, the afore mentioned petitioners shall be present on the date as fixed by the Trial Court. However, the Trial Court shall proceed as against the other accused and dispose of the same in accordance with law.

6.With the above directions, these Criminal Original Petitions stands partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

dhk

To

The Judicial Magistrate,
Ranipet District

+1cc to Mr.T.P.Prabakaran, Advocate, S.R.No.43382

Cr1.O.P.No.15219, 15223
& 15224 of 2022

GPL(CO)
RGA(19/07/2022)