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Crl.O.P.No.22478 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.O.P.No.22478 of 2022 and
Crl.M.P.Nos. 14453 and 14454 of 2022

1. M/s Saalim Shoes (P) Ltd.,
rep. by its Managing Director,
Mr.Arocot Mohammed Saalim,
No.1-A, Regency Apartment, No.5,
1stlane, Nungambakkam High Road,
Chennai 600 034.
Factor at No.63/1, 63/2, Ammoor Road,
Manthangal, Ranipet, Ranipet District 632403,
Tamil Nadu.
2. Mr.Arcot Mohammed Saalim,
Managing Director,
M/s Saalim Shoes (P) Ltd.,
No.1-A, Regency Apartment, No.5,
1stlane, Nungambakkam High Road,
Chennai 600 034.
3. Mr.Arcot Mohammed Aslam,
Director, M/s Saalim Shoes (P) Ltd.,
No.1-A, Regency Apartment, No.5,
1stlane, Nungambakkam High Road,
Chennai 600 034.



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4. Mr.Arcot Mohammed Ashfaque,
Director, M/s Saalim Shoes (P) Ltd.,
No.1-A, Regency Apartment, No.5,
1stlane, Nungambakkam High Road,
Chennai 600 034.

... Petitioners

Vs.

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

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for entire records in pursuant to STC No.14 of 2021 pending on the file of the District Munsiff cum Judicial Magistrate Court, Ranipet and quash the same.

For Petitioners : Mr. T.P.Prabakaran

ORDER

This Criminal Original Petition has been filed to quash the entire proceedings in STC No.14 of 2021 on the file of the District Munsiff cum Judicial Magistrate Court, Ranipet.



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2. The learned counsel for the petitioners submitted that one M/s Spectra Colours Company filed a petition under Section 9 of Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 against the petitioner Company in IBA /1104/2019 before the National Company Law Tribunal Division Bench-I, Chennai. In the above petition, the Tribunal had passed an order dated 22.09.2020 and the management of the first petitioner Company was taken over by the Interim Resolution Professional, appointed by the Tribunal. Now, the insolvency proceedings is pending between the parties.

3. The learned counsel for the petitioners further submitted that, when the insolvency proceedings is pending between the petitioner and the above M/s Spectra Colours, the present complaint before the Trial Court is not maintainable and hence the proceedings in STC No.14 of 2021 is liable to be quashed.

4. Heard the learned counsel for the petitioners and I have perused the materials on record.



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5. A perusal of the records shows that M/s Vasavi Marketing, the respondent herein, has filed a complaint in S.T.C.No.14 of 2021 before the District Munsif cum Judicial Magistrate, Ranipet, against the petitioner Company under Section 138 of Negotiable Instruments Act. The records further reveals that the respondent/complainant had initiated insolvency proceedings against the petitioner company for the unpaid debt of Rs.23,02,359/-. Pending proceedings, the petitioner Company has given an assurance that they would settle the sum of Rs.23,00,000/- in installments, and also made payment of Rs.3,00,000/- towards the first installment. The petitioner company has also given post dated cheques for a sum of Rs.4,00,000/- each, dated 30.06.2020, 31.07.2020, 31.08.2020, 30.09.2020 and 31.10.2020 drawn at M/s HDFC Bank, Ranipet Branch, towards the payment of remaining amount of Rs.20,00,000/-. Inview of the assurance and also the post dated cheques given by the petitioner Company, the above complaint was withdrawn by the respondent. However, when the cheques were presented for collection, the same were dishonoured for the reason “Funds insufficient” and hence after issuing Statutory Notice to the petitioner company, the respondent had filed a complaint in S.T.C.No.14 of 2021 against the



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petitioner company.

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6. In such circumstances, this Court is of the view that, if there is any factual dispute, the same has to be placed before the Trial Court by adducing oral and documentary evidences and based upon the evidences produced by the parties, the Trial Court has to decide the issues on merits. Hence, this Court do not find any reason to quash the criminal proceedings in the above S.T.C.No.14 of 2021 on the file of the District Munsif cum Judicial Magistrate, Ranipet, against the petitioners. As such, the present petition is liable to be dismissed, as it has no merits.

7. At this juncture, the learned counsel for the petitioners sought indulgence of this Court to dispense with the personal appearance of the petitioners 2 to 4 in S.T.C.No.14 of 2021, pending before the Trial Court.

8. Accordingly, the Criminal Original Petition is dismissed. However, inview of the submissions of the learned counsel for the petitioner, Crl.M.P.No.14454 of 2022 is allowed and the personal appearance of the



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petitioners 2 to 4 in S.T.C.No.14 of 2021 pending before the Trial Court is dispensed with, except for receiving copies, for answering the charges, for questioning under section 313 Cr.P.C. and any other dates fixed by the Trial Court. Consequently, connected Crl.M.P.No.14453 of 2022 is closed.

19.10.2022

Index:Yes/No
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To:

The District Munsif cum Judicial Magistrate,
Ranipet.



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V.SIVAGNANAM, J.

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