IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2022

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.O.P.NO.17714 OF 2019
AND
CRL.M.P.NO.8950 OF 2019

1.Susee Automobiles Pvt. Ltd.,
Rep. by its Managing Director,
Registered Office:
H-4 SIDCO Industrial Estate,
Madurai Virudhunagar Highway,
Kappalur, Madhurai - 625008.

2.J.Rajiv Subramanian

3.S.Jeyabalan ...Petitioners / Accused

Vs.

Axis Bank Limited,
Represented by its Authorized Officer,
Southern Recovery Cell,
Jawahar Towers,
1st Floor, New No.3, Old No.2,
Clubhouse Road, Anna Salai,
Chennai - 600 002. ...Respondent / Complainant

Prayer : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the proceedings in C.C.No.1678 of 2019 on the file of the Fast Track No.1, Metropolitan Magistrate Court, Moore Market Complex, Allikulam, Chennai and to quash the same.

For Petitioners : Mr.Mr.Y.Prakash

For Respondent : Mr.V.P.Krishnamoorthy

O R D E R

The petitioners herein are accused in the private complaint lodged by the respondent-bank alleging dishonour of the cheque issued by the petitioners herein to discharge the legally enforceable debt. The maintainability of the complaint is in question by way of quash petition.

2. The sum and substance of the complaint is that the complainant / finance institution has advanced term loan to the petitioners' firm to the tune of Rs.9 crores and to discharge portion of the debt amount, the subject cheque was issued on 24.09.2018, but it was returned with an endorsement 'Account Blocked' and therefore, criminal prosecution launched after passing statutory notice.

3. In the petition to quash the said complaint, it is contended by the petitioners/accused that loan availed to the tune of Rs.9 crores for which the petitioners had already paid Rs.6.5 crores. During the month of July 2019, One Time Settlement (OTS) was arrived between the Bank and the petitioner. While so, the cheque which was given to the Bank, as security, much prior to OTS is filled up and presented for collection. After the arrival of One Time Settlement, the cheque issued as security, prior to OTS cannot be termed as cheque issued for discharge of legally enforceable debt.

4. In response to the above submission, the learned counsel for the defacto complainant submits that the petitioners herein after availing the loan had been in chronic default. Even after entering into One Time Settlement price, they never honoured the terms of settlement and as on date, more than Rs.13 crores due and payable by the petitioners. The Bank has initiated proceeding before the Debt Recovery Tribunal and same is pending. It is highly preposterous to claim that the subject cheque was issued only as a security and not for legally enforceable debt. When admittedly as against loan of Rs.9 crores as principle, only Rs.6.5 crores so far paid.

5. On considering the rival submissions and perusal of the record indicates that there is a prima-facie material available to prosecute the petitioners herein and it is open to the petitioners to discharge the statutory burden of presumption by adducing evidence before the trial Court.

6. With this observation, the quash petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

AT

To

The Metropolitan Magistrate Court,
Fast Track No.1,
Moore Market Complex,
Allikulam, Chennai.

+1cc to Mr.Y.Prakash, Advocate Sr.No.36706

Crl.O.P.No.17714 of 2019 and
Crl.M.P.No.8950 of 2019

RK(CO)
RVM(07/07/2022)