IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.12139 of 2016
and Crl.M.P.Nos.6231 & 6232 of 2016

1. M/s. Coastal Projects Limited,
   Gone into Liquidation*
   Plot No.304-A, Road No.78,
   Flim Nagar, Jubilee Hills,
   Hyderabad.
2. S.Surendra,
   Managing Director,
   M/s. Coastal Projects Limited,
   Plot No.304-A, Road No.78,
   Flim Nagar, Jubilee Hills,
   Hyderabad.
3. G.Harihara Rao,
   Director,
   M/s. Coastal Projects Limited,
   Plot No.304-A, Road No.78,
   Flim Nagar, Jubilee Hills,
   Hyderabad.
4. A.Baskara Rao, Expired*
   Authorized Signatory,
   M/s. Coastal Projects Limited,
   Plot No.304-A, Road No.78,
   Flim Nagar, Jubilee Hills,
   Huderabad.
   *(*Amended as per order in*
   Crl.O.P.No.12139 of 2016 and
   Crl.M.P.No.6231 of 2016
   dated 08.09.2021) ...Petitioners

Vs.

Asset Reconstruction Company (India) Ltd.,
(Arcil) in its capacity as Trustee of
ARCIL-SBPS-041-I-Trust,
(Amended as per order of this Court dated 30.09.2021 in Crl.O.P.No.12139 of 2016)
The Ruby, 10th Floor,
29 Senapathi Bapti Marg,
Dadar West,
Mumbai – 400 028,
Rep by its authorized signatory
Manjula.
(Substituted as per the order of this Court in Crl.M.P.No.9057 of 2021 in Crl.O.P.No.12139 of 2015 dated 08.09.2021) ... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.818 of 2013 on the file of the Fast Track Court, Metropolitan Magistrate, George Town, Chennai, pending as against the petitioner for the alleged offence under Section 138 of the Negotiable Instruments Act and quash the said complaint, being abuse of process of law.

For Petitioners : Mr.E.Om Prakash, Senior Counsel
Assisted by Mr.P.Elayarajkumar
for M/s.Ramalingam and Associates

For Respondent : Ms.Abitha Banu

ORDER

This petition has been filed to quash the proceedings in in C.C.No.818 of 2013 on the file of the learned Metropolitan Magistrate, Fast Track Court, George Town, Chennai, thereby taken cognizance for the offences punishable under Sections 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the NI Act") as against the petitioners.

2. The complainant is a bank and the petitioners are the accused in the complaint lodged by the complainant for the offence punishable under Section 138 of NI Act. The first accused is a company and the second accused is the Managing Director and the accused 3 & 4 are the Directors of the company. The first accused entered into a Banking Arrangement on 29.08.2011, under which the first accused availed an over draft of Rs.50 crores to meet the working capital requirements. The first accused also executed Working Capital Demand Agreement dated 29.08.2011. As per the terms and conditions of the Working Capital Demand Agreement, the cash flow/receivables from the projects will be routed from specific projects at least proportionate to the complainant's share in total general fund based working capital limit availed by the company by way of post dated cheques.

3. Accordingly, the first accused company opened current account and also directed the payment to be deposited in the said current account to facilitate the complainant in maintaining the said loan facility availed by the first accused. In respect of the said banking facility availed, the first accused issued cheque dated 31.08.2012 for a sum of Rs.15 crores. The said cheque was presented for collection and the same was returned dishonored for the reason “exceeds arrangement”. After causing statutory notice, the complainant lodged the present complaint.

4. The learned Senior Counsel appearing for the petitioners submitted that the first petitioner company is now under liquidation by the National Company Tribunal and the fourth petitioner died on 19.05.2021. The first petitioner had availed banking arrangements in the nature of working capital facilities secured by specific securities. The complainant bank had agreed for a multiple banking arrangement and sanctioned specific limits of Rs.50 crores as a working capital over draft facility. The cash flow/receivables are to be routed from specific projects with the proportionate the bank's share from the general funds under the multiple banking arrangement.

4.1. Therefore, the first petitioner company was required to issue post dated cheque for a sum of Rs.15 crores representing each month's proportionate cash flow/receivables to be routed from specific projects. The said over draft limit of Rs.50 crores was also provided with two sub-limits in the nature of short term and pre-shipment finance and export orders. Therefore, the cheque was issued only for the purpose of security and it was not issued for any legally enforceable debt.

4.2. He further submitted that if at all as contented by the respondent, the cheque had to be issued in the name of the respondent. As per the banking arrangement/facility, the cash flow/receivables to be routed from specific projects at least proportionate to the complainant's share in the total general fund based working capital limit availed by the first accused by way of post dated cheques. Therefore, the cheque was given for that purpose and it was not issued for any legally enforceable debt. In fact, in the very same agreement for repayment, the post dated cheque was obtained for interest and principal. Accordingly, the cheque was post dated one and it was issued for interest and principal.

5. The learned counsel appearing for the respondent submitted that the first petitioner had entered into baking arrangement on 29.08.2011 and availed over draft facility for Rs.50 crores. The first petitioner agreed that the buyers credit would be upto 180 days and on maturity would be liquidated by debiting the overdraft current account. Accordingly, the cheque was issued in discharge of the said amount to the overdraft current account maintained in the complainant bank. As per the instructions, the cheque was presented and the same was returned dishonored for the reason "Exceeds Arrangement". In fact, after receipt of the statutory notice, the petitioner did not even give any reply to the notice. That apart, the grounds raised by the petitioners can be considered only during the trial.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. Admittedly, the first accused company entered into a banking arrangement on 29.08.2011 and availed an overdraft facility for Rs.50 crores to meet the working capital requirements. It is also executed a working capital demand agreement on 29.08.2011. As per the terms

and conditions, the cash flow/receivables from the projects will be routed from specific projects at least proportionate to the complainant's share in total general fund based working capital limit availed by the first accused by way of post dated cheque. In view of the said arrangement, the first accused opened a current account with the complainant's bank and directed the payment to facilitate the complainant in maintaining the said loan facility availed by the first accused.

8. Accordingly, the first accused availed the said facility and issued cheque for a sum of Rs.15 crores, to its current account maintained in the complainant bank. Therefore, though it was issued as per the terms and conditions of the working capital demand agreement dated 28.08.2011, for the facility already availed by the petitioners, it cannot be said that it was not issued for legally enforceable debt. The first petitioner only opened the current account and in order to maintain the over draft amount, the first petitioner issued the cheque. Therefore, the cheque was issued for legally enforceable debt and the offence under Section 138 of the NI Act is clearly made out as against the petitioners.

9. Further the ground raised by the petitioners are mixed questions of law and fact and it cannot be considered under Section 482 of Cr.P.C. It can be considered during the trial before the trial Court. Therefore, this Court is not inclined to quash the proceedings. However, considering the facts and circumstances, the personal appearance of the third petitioner alone is dispensed with and he shall be represented by a counsel after filing appropriate application. The third petitioner shall be present before the Court below at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C., and at the time of passing judgment. Since the case is of the year 2013, the trial Court viz., the learned Metropolitan Magistrate, Fast Track Court, George Town, Chennai, is directed to complete the trial in C.C.No.818 of 2013 and dispose the same within a period of three months from the date of receipt of a copy of this Order.

10. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

18.10.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
rts

To

1. The Metropolitan Magistrate,
   Fast Track Court,
   George Town, Chennai,

G.K.ILANTHIRAIYAN. J,

rts

Crl.O.P.No.12139 of 2016
and Crl.M.P.Nos.6231 & 6232 of 2016

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