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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P Nos.16158 of 2023
and Crl.MP.No.10163 of 2023

1.M/s.Sargam Metals Pvt.Ltd.,
Rep.by its Managing Director S.Arun
Module 35,3rd Floor, Block 1
Electronic Complex
Thiru vi ka Industrial Estate
Guindy, Chennai 600 032.

2.Mr.S.Arun
Manaing Director of M/s.Sargam Metals Pvt.Ltd.,
Module 35,3rd Floor, Block 1
Electronic Complex
Thiru vi ka Industrial Estate
Guindy, Chennai 600 032.

3.Mr.S.Varadachari, Senior Manager
Administration of M/s.Sargam Metals Pvt.Ltd.,
Module 35,3rd Floor, Block 1
Electronic Complex
Thiru vi ka Industrial Estate
Guindy, Chennai 600 032.

.. Petitioners/petitioners/Accused 1,3 & 4

.vs.

M/s.Newlink Overseas Finance Ltd.,
By its Director Mr.U.P.Prakasham
Duly rep.by its authorized signatory/
Senior General manager, Mr.S.Rajan
Mamatha Complex, Second Floor
No.25, Whites Road
Royapettah, Chennai 600 014.

.. Respondent/Respondent/Complainant



PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 10.5.2023 passed by the Fast Track Court II, Egmore, Metropolitan Magistrate, Egmore, Chennai in CrI.MP.No.8489 of 2023 in C.C.No.5828 of 2019 and consequently, allow the relief as sought for by the petitioners in CrI.MP.No. 8489 of 2023 of 2023 in CC.No.5828 of 2019.

For Petitioners : Mr.Nithyesh Natraj
for Mr.Anirudh A. Sriram

For Respondent : Mr.A.Natarajan
Senior Counsel
for Mr.A.Madhumathi

ORDER

The order passed by the Court below in CrI.MP.No.8489 of 2023, dated 10.5.2023, has been put to challenge in this criminal original petition.

2.The respondent filed a Complaint against the petitioners for offence u/s.138 of the Negotiable Instruments Act, 1881. The case was at the stage of defence side evidence. According to the petitioners, PW-1 during his cross examination had given some answers pertaining to the payments made by the Company to the Complainant on various dates. The ledger statement that was maintained by the A1 Company was also shown to PW.1 and PW.1 had denied



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the receipt of the payments. However, PW1 had stated that he has to refer his books of accounts/account statement in order to verify if any payments were made by the A1 Company.

3. Based on the above answer given by PW.1, the present application came to be filed u/s.91 Cr.PC., to summon the Branch Manager of HDFC, for speaking about the transactions that are found in the ledger statement maintained by A1 Company. This application was dismissed by the Court below and aggrieved by the same, the present criminal original petition has been filed before this Court.

4. Heard Mr.Nithyesh Natraj, learned counsel for the petitioners and Mr.A.Natarajan, learned Senior Counsel for respondent.

5. The petitioners are taking a defence that they have made various payments to the Complainant and the same is reflected in the ledger statement that was marked through PW.1 and in order to substantiate the same, they wanted to summon the Branch Manager of HDFC Bank to talk about those banking transactions found in the ledger statement marked as Ex.D1.



According to the petitioners, they have to establish the fact that they have made the payments to the Complainant and that the burden of proof is upon them and unless they are given an opportunity, they will not be able to rebut the presumption u/s.139 of the Negotiable Instruments Act, 1881.

6.In the considered view of this Court, the petitioners have already put sufficient questions to PW.1 during cross examination. If the petitioners wants to establish their defence that they have made payments to the Complainant, they have to call the Bank Manager on the side of the defence and ask him to furnish the relevant Bank transactions maintained with the Bank. The Bank Manager cannot come and talk about the ledger statement maintained by A1 Company. He can only speak about records pertaining to the Bank. Therefore, it is well open to the petitioners to establish their defence by calling for the necessary documents and getting the clarification from the Bank Manager regarding the same. This will sufficiently take care of the grievance expressed by the petitioners.

7.In the light of the above discussion, this Court does not find any illegality or infirmity in the order passed by the Court below and it does not warrant the interference of this Court.



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8. This Criminal Original Petition is disposed of with a direction to the Court below to complete the proceedings in C.C.No.5828 of 2019, within a period of three months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
kp

To

Fast Track Court II, Egmore,
Metropolitan Magistrate, Egmore,
Chennai.



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N. ANAND VENKATESH., J.
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