



CrI.O.P.No. 21387 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2023

CORAM:

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

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and

CrI.M.P.Nos.11064 & 11065 of 2019

1. M/s.Pelican Rubber Ltd.,
Represented by its Director,
Kapil Agarwal.

2. Kapil Agarwal,
Director,
M/s.Pelican Rubber Ltd.,

3. Anand Agarwal,
Director,
M/s.Pelican Rubber Ltd.,

.... Petitioners/Accused 1, 2 & 4

Vs

M/s.Eswar Rubber Products Pvt.Ltd.,
Represented by its
Managing Directorate
K.Vaidyalingam

.... Respondent/Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records of the case in S.T.C.No.299 of 2017 on the file of the Judicial Magistrate No.III, Salem and quash the same.



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For Petitioners : Mr.G.A.Thiyagarajan

For Respondent : Mr. D.Sivakumaran

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.299 of 2017 on the file of the Judicial Magistrate No.III, Salem.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioners are accused in the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. The crux of the complaint is that the first accused is a Company. The other accused persons are Directors, who are managing the day to day affairs of the company. They are responsible for the day to day affairs of the company and in charge of day to day business of the company. Since 07.08.2014 to 25.09.2015, the accused purchased Butyl Reclaimed Rubber ERP-501 on credit from the respondent on various dates for a total sum of Rs.5,73,15,250/-. Initially,



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the accused had given 22 post dated cheques towards part payment of the amount. When the cheques were presented for collection, the same were returned with an endorsement “Funds Insufficient”. After causing statutory notice dated 31.03.2016, the respondent lodged a complaint.

4. The learned counsel appearing for the petitioners would submit that the petitioners are arrayed as A1, A2 and A4. After return of the cheques, the respondent caused legal notice on 31.03.2016 to the first accused alone, that too, the first accused represented by its Managing Director viz., Shiv Shankar Agarwal. However, the respondent herein filed a complaint as against persons by adding one another Director. That apart, the first accused represented by its Managing Director, viz., Shiv Shankar Agarwal, died and as such, by adding his son as represented by its first accused company, without issuance of any notice, the complaint was lodged. That apart, the second accused was not issued any statutory notice as contemplated under Section 138 of Negotiable Instruments Act. The said complaint was presented before the Trial Court on 13.05.2016. After six months, once again another complaint was lodged by the respondent on 03.11.2016, by adding the other two



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Directors in the complaint and also adding the second paragraph in the filed complaint. The respondent failed to issue any notice to the other Director except the first accused. Therefore, there was no cause of action to lodge the complaint for the offence under Section 138 of Negotiable Instruments Act as against A2 to A4. That apart, in the first complaint, they had added only two accused. On second complaint, they are adding two more accused as 3 and 4 and adding second paragraph on the filed complaint.

5. The learned counsel appearing for the respondent produced a copy of order in STC No.299 of 2017. The said complaint was filed as against four accused persons, in which, the petitioners are arrayed as A1, A2 and A4. He also admitted that no notice was issued to other Directors except the first accused as contemplated under Section 138 of Negotiable Instruments Act. Though the Directors of the first accused Company was held liable to be punishable for the offence committed under Section 138 of Negotiable Instruments Act, the Directors were not issued with any notice. Therefore, the respondent had no cause of action to lodge a complaint as against the other Directors, i.e., 2 to 4 viz., A1, A2 and A4.



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6. Admittedly, the statutory notice dated 31.03.2016 was issued only to the first accused, that too, represented by its Managing Director one Shiv Shankar Agarwal. However, before filing the complaint, he died and the respondent itself added his son as Managing Director of the first accused and represented on behalf of the first accused. He was also not issued with any notice. In the first complaint, he had been added as second accused. However, no notice was served on the second accused. Therefore, there was no cause of action to lodge a complaint for the offence under Section 138 of Negotiable Instruments Act against the petitioners 2 and 3 herein. However, the first accused is held liable to be punishable for the offence under Section 138 of Negotiable Instruments Act. Therefore, the quash petition as against the first petitioner is dismissed. The Trial Court is directed to proceed with the trial in STC No.299 of 2017 as against the first accused and complete the same within a period of six months from the date of receipt of a copy of this order.

7. Though the third accused did not file any application to quash the proceedings, as discussed above, he is also not liable to be



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punished for the offence under Section 138 of Negotiable Instruments Act, since, notice was served on him. Therefore, the entire proceedings cannot be sustained as against A2 to A4 and it is liable to be quashed. Accordingly, the proceedings in S.T.C.No.299 of 2017 on the file of the Judicial Magistrate No.III, Salem, is hereby quashed as against 2nd and 3rd petitioners alone.

8. In the result, this Criminal Original Petition is partly allowed. Consequently, connected miscellaneous petitions are closed.

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Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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To
The Judicial Magistrate No.III,
Salem.



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