IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 15.07.2022

Delivered On : 27.01.2023

CORAM:

THE HON'BLE **MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

Crl.O.P.No.21371 of 2021
and
Crl.M.P.Nos.11553 and 11555 of 2021

1.V.Gunasekaran,
Partner/Authorised Signatory in
Advantech Engineering Enterprises,
Having its Registered Office and Factory at:
No.70, New SIDCO Industrial Estate,
Srinagar, Hosur – 635 109 (Krishnagiri District).

2.Advantech Engineering Enterprises,
Represented by its Partners,
Having Registered Office and Factory at:
No.70, New SIDCO Industrial Estate,
Srinagar, Hosur – 635 109 (Krishnagiri District).

... Petitioners/Accused 1&2

-vs-

Mahalakshmi Bright Steel Industries Private Limited,
The Company Registered under the Companies Act,
(Corporate Identity No.U27100TN2011PTC090623)
Having its Registered Office at
No.255/3C, Sadayankuppam Main Road,
Sadayankuppam Village, Manali, Chennai – 600 106.

Represented by its Manager and Power of Attorney,
Mr.Sanjay Modi,
Manager,
Mahalakshmi Bright Steel Industries Private Limited,
No.255/3C, Sadayankuppam Main Road,
Sadayankuppam Village, Manali, Chennai – 600 106.
... Respondent/Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C, praying to call for records relating to S.T.C. No.106 of 2021 on the file of the learned Fast Track Court (Magistrate Level), Ambattur and quash the same against the Petitioners.

For Petitioners : Mr.V.P.Raju
For Respondent : Mr.R.Muthukumar

ORDER

This Criminal Original Petition had been filed seeking to call for records relating to S.T.C. No.106 of 2021 on the file of the learned Fast Track Court (Magistrate Level), Ambattur and quash the same against the Petitioners.

2.The learned Counsel for the Petitioners submitted that the Respondent was running steel bar business from the year 2015 onwards and was having business dealing with the Petitioners. During the year 2021, there was some payment due to the Respondent. The Respondent taking advantage of the cheque, which was given by the Petitioners in the year 2015, filled up the same and initiated the above case against the Petitioners. He further submitted that the amount of invoice annexed in page No.1 of the typed set viz., Rs.4,08,678/- would exactly tally with the cheque amount, which is reflected in complaint at paragraph No.4. The Respondent and the Petitioners had running account and the cheque which was issued towards the invoice was retained by the Respondent illegally and now being misused and projected as if the cheque was issued towards the partial discharge of the alleged total liability of Rs.63,26,134/-. Further, the learned Counsel for the Petitioners referred to the invoice as well as the statement of accounts to show that the cheque was issued during the period 2015 to discharge of other liabilities. The Respondent holding that cheque and misused the same for the present liability.

3.It is the contention of the learned Counsel for the Petitioners that the amount due to the Respondent/Complainant was paid through RTGS. In the due course of the business transaction, cheque was given as a security to the Respondent, which was misused and presented before the Court as though there is another prior liability.

4.It is the contention of the learned Counsel for the Petitioners that the Petitioners and the Respondent had running account in the Bank. After 2019, there was no business transaction. There were interrupted supply by the Respondent/Complainant. Even during the Covid lock down, the Petitioners had paid the dues to the Respondent. Suppressing those facts, the Respondent had misused the cheque leaf, which was given to the Respondent towards security. In the course of the business, the cheque leaf was presented, without informing the Petitioners. Prior to the issuance of legal notice to the Petitioners, they had warned the Respondent/Complainant not to present the cheque. Despite such warning, the Respondent had presented the cheque of the Petitioners as though there was a liability. It is the contention of the learned Counsel for the Petitioners that the debt is time barred. They have not been supplied to the Petitioners by the Respondent. The Invoice-cum-Delivery Challan bearing No.MBSI/1646, dated

29.11.2015 for the amount of Rs.4,08,678/-, for which the Cheque bearing No.002880 dated 18.01.2021 is time barred and delivery charge dated mentioned above is also time barred.

5. The Respondent disputes the claim of the Petitioners stating that the Petitioners did not pay the GST dues. Therefore, the Respondent was forced to prefer the complaint. The learned Counsel for the Respondent submitted that what have been raised by the Petitioners are to be considered as valuable defence only during trial. Whether the cheque was presented for due liability and whether it is time barred are the subjects to be considered during trial in the course of evidence collected by the trial Court. Therefore, the learned Counsel for the Respondent sought to dismiss the petition.

6. On Consideration of the rival submissions and on perusal of the the invoice enclosed in the typed set of the Petitioners, the invoice date is mentioned as dated 29.11.2015 whereas in the typed set furnished by the Respondent, it does not contain the date as mentioned in the Petitioners typed set. As per the typed set furnished by the learned Counsel for the Petitioners, the invoice for Rs.4,08,678/- is dated 29.11.2015 for a TIN

No.33573323289. Further the contention of the learned Counsel for the Petitioners is that after 2019, there has not been any business transaction between the Petitioners and the Respondent. Therefore, the filing of the complaint with the invoice prepared by the Respondent as though the Petitioners are liable to pay outstanding is found to be unacceptable.

7. The learned Counsel for the Respondent disputes the claim of the Petitioners stating that whether the Respondent had falsified the documents and misused the cheque are to be established only in the course of the trial and not by exercising powers under Section 482 Cr.P.C.

8. On consideration of the rival submissions and on perusal of the typed set furnished by both parties, the contention of the Petitioners that the claim of the Respondent is time barred and the custody of the cheque belonging to the Petitioners with the Respondent having been filled up, after the dispute arose between the Petitioners and the Respondent and subsequent to the non-supply of the materials as per the requirement of the Petitioners and after exchange of notices are considered. Therefore, as per the submission of the learned Counsel for the Petitioners, the invoice was

raised by the Respondent. The cheque issued by the Petitioners is No.002880 dated 18.01.2021 for an amount of Rs.4,08,678/- for the Invoice No.MBSI/1646 dated 29.11.2015 whereas as per the banks statement of the City Union Bank, the cheque No.002885 was presented on 04.03.2016 for Rs.18,618/- and was encashed. The cheque No.002888 was presented on 10.03.2016 for Rs.5,50,057/- and was encashed. Therefore, it is presumed that the cheque that was in the custody of the Respondent was filled up and presented for an invoice of the year 2015 which is time barred.

9.As per the reported ruling in ***2012 SCC OnLine Mad 2776 : (2012) 2 LW (Cri) 516 [Sama Dharman Proprietory M/s. Sri Sai Tex and another -vs- Natarajan]*** for a time barred debt a complaint under Section 138 of Negotiable Instruments Act cannot be filed. If it is filed as proof of prior liability then in such circumstances under Section 25(3) of the Indian Contract Act, 1872, there must be separate and distinct promise by the person, who issued cheque that even though it is a time barred debt, he is ready and willing to honour the debt. In the absence of such acknowledgment of time barred debt, the contention of the learned Counsel for the Respondent that the Petitioners herein had issued cheque bearing No.002880 for the prior liability that is for the invoice-cum-delivery challan of the year 2015 bearing No.MBSI/1646 is found unacceptable. The contention of the learned Counsel for the Petitioners is acceptable. Therefore, the objection by the learned Counsel for the Respondent/Complainant that petition under Section 482 of Cr.P.C. is not maintainable and what had been raised by the learned Counsel for the Petitioners is to be considered subject to the evidence before the trial Court and the petition under Section 482 of Cr.P.C. cannot be invoked, is found unacceptable and unreasonable, particularly, in the light of the bank transactions which shows that the claim of the Petitioners that the cheque issued for the prior liabilities was misused by the Respondent is beyond reasonable doubt.

In the result, the **Criminal Original Petition is allowed.**

The Complaint in S.T.C. No.106 of 2021 on the file of the learned Fast Track Court (Magistrate Level), Ambattur is quashed against the Petitioners. Consequently, the connected Criminal Miscellaneous Petitions are closed.

27.01.2023

SRM
Index : Yes / No
Internet : Yes / No

To

The Fast Track Court (Magistrate Level),
Ambattur.

SATHI KUMAR SUKUMARA KURUP., J.

SRM

Order made in

Crl.O.P.No.21371 of 2021

27.01.2023