



Crl.O.P.No.23750 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	03.02.2023
Pronounced on	:	24.02.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.23750 of 2022

and

Crl.M.P.No.1446 of 2023 and 15124 of 2022

1.M/s.Indian Power Projects Limited,
represented by its Director, Shri T.Mohan,
Suite-D, 1st Floor Sun Plaza Complex,
Chennai – 600 006.

2.T.Mohan

3.M.Anand,
Director,
Indian Power Projects Limited,
1824/4, 18th Main Road,
Anna Nagar West,
Chennai – 40.

... Petitioners

/vs/

V.Gajarajan

... Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for records pertaining to the private complaint proceedings in S.T.C.No.2032 of 2021, on the file of FTC-II, Metropolitan Magistrate



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Court, Egmore, at Allikulam Complex, Chennai – 600 003 and quash the same.

For Petitioners	...	Mr.P.Selvaraj assisted by Mr.R.Naresh Kumar
For Respondent	...	Mr.Richard wilson for M/s.P.Wilson Associates

ORDER

This petition is filed to call for records pertaining to the private complaint proceedings in S.T.C.No.2032 of 2021, on the file of FTC-II, Metropolitan Magistrate Court, Egmore, at Allikulam Complex, Chennai – 600 003 and quash the same.

2. The respondents filed a complaint under Section 138 to 142 of Negotiable Instruments Act against the petitioners. The averment made in the complaint, in brief, are as follows,

(i) The respondent/complainant provided Technical and Engineering consultancy and financial assistance to the 1st petitioner company and its other group of companies/sister companies from time to time.

(ii) The 2nd accused is the Director in all the companies. After several rounds of discussions, it was agreed among the petitioners and the respondent that, 1st petitioner and its group/sister companies would pay



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Rs.200 crores in settlement of all its dues. Accordingly, Settlement Agreement dated 24.11.2020 was executed between the 2nd petitioner and the respondent, in the presence of 3rd petitioner, who is also one of the director of the 1st petitioner company. 2nd petitioner was a Director of 1st petitioner company, issued following seven cheques for a total sum of Rs.45 crores towards part payment of the amount due.

Cheque No.	Date	Amount	Bank
000018	28.02.2021	1,00,00,000	Bank of Baroda, T.Nagar, Chennai
000019	28.02.2021	2,00,00,000	Bank of Baroda, T.Nagar, Chennai
000020	28.02.2021	2,00,00,000	Bank of Baroda, T.Nagar, Chennai
000021	28.02.2021	10,00,00,000	Bank of Baroda, T.Nagar, Chennai
000022	27.02.2021	10,00,00,000	Bank of Baroda, T.Nagar, Chennai
000023	27.02.2021	10,00,00,000	Bank of Baroda, T.Nagar, Chennai
000024	27.02.2021	10,00,00,000	Bank of Baroda, T.Nagar, Chennai
	TOTAL	45,00,00,000	

(iv) The respondent deposited seven cheques with Canara Bank, Anna Nagar (E) Branch on 23.04.2021. All the seven cheques were



returned by the Bankers citing “Payment stopped by the drawer” vide banker's memo dated 26.04.2021. The respondent sent a legal notice dated 08.05.2021 demanding payment of Rs.45 crores. Petitioners 1, 2 and 3 have received the legal notice on 13.05.2021, 11.05.2021 and 11.05.2021 respectively. But, they did not take any steps to repay the amount. Petitioners have issued the cheques without sufficient funds in the account and then gave instruction to stop payment. Petitioners are liable to be punished under Section 138 to 142 of Negotiable Instruments Act. Therefore, a complaint was filed. This complaint was taken on file in S.T.C.No.2032 of 2021, on the file of Fast Track Court II, Metropolitan Magistrate Court, Egmore, Allikulam Complex, Chennai.

3. Challenging the said complaint, this petition is filed for the relief of quashment.

4. The learned counsel for the petitioners/accused assailed the complaint on the following grounds,

(i) The Settlement Deed dated 24.11.2020 was not signed by any authorized representative of 1st petitioner company namely M/s.Indian



Power Projects Limited. It was signed only by the 2nd petitioner in his individual capacity. There is no material produced to show that 2nd petitioner was authorized to enter into the settlement, on behalf of 1st petitioner company. Therefore, Settlement Deed dated 24.11.2020 is not legally enforceable.

(ii) The cheques alleged to have been issued for payment of the amount arrived at in terms of compromise cannot have any legal validity.

(iii) It is seen from the Settlement Deed dated 24.11.2020 that, the respondent said to have made payments and provided Technical and Engineering consultancy and financial assistance to the 1st petitioner company, during the year 2005 to 2012. There was no acknowledgment of liability prior to 2015. Therefore, whatever the payment/liability due, is barred by limitation, on the expiry of three years from 2012 i.e., in 2015.

(iv) The cheques alleged to have been issued for the time barred debts cannot be used for collection of money, for the reason that, there was no legally enforceable debt/liability.



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WEB COPY (v) The respondent had already given a criminal complaint against the petitioners and First Information Report in Crime No.88 of 2022 was registered. The Directors were arrested for the offence under Sections 406, 420 and 34 of IPC and kept in jail for 48 days. The petitioners were forced to undergo a Settlement with the respondent, in order to come out of bail.

5. Relying on these grounds, the learned counsel for the petitioners submitted that, the case filed on the basis of dishonouring of cheques, which were issued for time barred debt cannot be maintained in law and therefore, he prayed for quashment of the complaint in S.T.C.No.2032 of 2021 on the file of Fast Track Court II, Metropolitan Magistrate Court, Egmore, Allikulam Complex, Chennai.

6. In response, learned counsel for the respondent submitted that, respondent had invested Rs. 50.32 crores in the 1st petitioner company. He also provided Technical and Engineering Consultancy services to the 1st petitioner company, in which, 2nd and 3rd petitioners are closely related. 2nd



petitioner is the major Stakeholder in the 1st petitioner company. With the funds provided by the respondent, petitioners purchased lands and transferred the lands in the name of their family members, instead of investing in the business. The grounds that, the debt is time barred and that, the settlement agreement cannot be enforced, for the reason that, there was no acknowledgment of liability within the period of limitation have not been taken in the quash petition. Unless these grounds are raised in the quash petition, it is not open to the petitioners to raise these grounds during the course of arguments. Even as per the Settlement Agreement, it is clear that 2nd petitioner holds major shares in the following companies namely,

- a) Indian Gas Limited,
- b) Indian Power Projects Limited
- c) Indian Integrated Energy Limited.

7. He further submitted that it was acknowledged in the settlement that, these companies thankfully acknowledged the full hearted support extended by the respondent Mr.V.Gajarajan, technically, financially and morally for the power and other projects developed by the said companies.



The existing Directors and shareholders of the above companies, collectively agree to make full and final settlement to Mr.V.Gajarajan.

Thus, full settlement for the investment and the professional service rendered to all the above mentioned companies by Mr.V.Gajarajan was proposed at Rs.200 crores. This amount to be paid in the following manner,

A. First payment of INR 50 crores (fifty crores) within 90 days from the date of signing the settlement agreement.

B. Second payment of INR 50 crores (fifty crores) within 90 days from the date of first payment.

C. Third and final payment of INR 100 crores (hundred crores) to be paid within 90 days from the date of second payment.

8. It is further submitted by the learned counsel for the respondent that, in an agreement entered into between the 2nd petitioner and respondent on 15.06.2005, it was mentioned that 2nd petitioner Mr.T.Mohan is the Developer and Chief Operating Officer and authorized person to handle all corporate affairs and development of Indian Power Projects limited, namely the 1st petitioner company. It makes it clear that, 2nd



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He was also ready to convey the lands, that stood in the name of above said five companies, once he comes out of bail.

10. Learned counsel for the respondent further submitted that, this affidavit is self explanatory that, 2nd petitioner is the man-incharge of all the affairs of the 1st petitioner company. 3rd petitioner is one of the witnesses to this agreement. Therefore, settlement agreement dated 24.11.2020 would bind the petitioners in all force. Respondent would take all the steps to summon the relevant documents, during the course of the trial, to show that 2nd petitioner is the man-incharge of all the affairs of the 1st petitioner company. Unless the opportunity of trial is provided, it would amount to causing great prejudice to the petitioners. The scope of quashing the complaint under Section 482 Cr.P.C, when disputed facts are involved, is very limited. The Court must allow the parties to face the trial to get justice. The issue, as to whether the dishonoured cheques were issued for the discharge of the time barred debt liability, cannot be considered in a petition under Section 482 Cr.P.C. To the statutory notice sent, there was no reply by the petitioners. Therefore, learned counsel for the respondent



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submitted that, this petition has no merits and liable to be dismissed, allowing the parties to face trial. Respondent counsel relied on the following judgments, in support of his submissions.

11. Judgment reported in [2022 SCC Online SC 513] in the case of ***“Rathish Babu Unnikrishnan Vs. State (Govt. of NCT of Delhi) and another”*** is relied on for the proposition that the Court’s approach should be careful enough to not to prematurely extinguish the case by disregarding the legal presumption which supports the complaint. The relevant extract is as follows:

“10. It is also relevant to bear in mind that the burden of proving that there is no existing debt or liability, is to be discharged in the trial. For a two judges Bench in M.M.T.C. Ltd. & Anr. vs. Medchl Chemicals and Pharma (P) Ltd. & Anr.³, Justice S.N. Variava made the following pertinent observation on this aspect: -

“17. There is therefore no requirement that the complainant must specifically allege in the complaint that



there was a subsisting liability. The burden of proving that there was no existing debt or liability was on the respondents. This they have to discharge in the trial. At this stage, merely on the basis of averments in the petitions filed by them the High Court could not have concluded that there was no existing debt or liability.”

11. The legal presumption of the cheque having been issued in the discharge of liability must also receive due weightage. In a situation where the accused moves Court for quashing even before trial has commenced, the Court’s approach should be careful enough to not to prematurely extinguish the case by disregarding the legal presumption which supports the complaint. The opinion of Justice K.G. Balakrishnan for a three judges Bench in Rangappa vs. Sri Mohan⁴ would at this stage, deserve our attention: -

“26. ... we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the



existence of a legally enforceable debt or liability. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.”

12. In Judgment reported in **[2022 LiveLaw (SC) 879]** in the case of **“Yogesh Jain Vs. Sumesh Chadha”**. It is observed that,

“Once a cheque is issued and upon getting dishonoured a statutory notice is issued, it is for the accused to dislodge the legal presumption available under Sections 118 and 139 respily of the N.I. Act. Whether the cheque in question had been issued for a time barred debt or not, itself prima facie, is a matter of evidence and could not have been adjudicated in an application filed by the



accused under Section 482 of the CrPC.”

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13. Judgment reported in [2012 (7) SCC 621] in the case of ***“Sangeetaben Mahendrabhai Patel Vs. State of Gujarat and another”***, was relied on for the proposition that merely because a criminal case was given and also complaint under Section 138 of Negotiable Instruments Act was filed, there is no question of double jeopardy. The relevant extract is as follows:

“37. Admittedly, the appellant had been tried earlier for the offences punishable under the provisions of [Section 138](#) N.I. Act and the case is sub judice before the High Court. In the instant case, he is involved under [Sections 406/420](#) read with [Section 114](#) IPC. In the prosecution under [Section 138](#) N.I. Act, the mens rea i.e. fraudulent or dishonest intention at the time of issuance of cheque is not required to be proved. However, in the case under [IPC](#) involved herein, the issue of mens rea may be relevant. The offence punishable under [Section 420](#) IPC is a serious one as the sentence of 7 years can be imposed.



38. *In the case under **N.I. Act**, there is a legal presumption that the cheque had been issued for discharging the antecedent liability and that presumption can be rebutted only by the person who draws the cheque. Such a requirement is not there in the offences under **IPC**. In the case under **N.I. Act**, if a fine is imposed, it is to be adjusted to meet the legally enforceable liability. There cannot be such a requirement in the offences under **IPC**. The case under **N.I. Act** can only be initiated by filing a complaint. However, in a case under the **IPC** such a condition is not necessary.*

39. *There may be some overlapping of facts in both the cases but ingredients of offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions.”*

14. The learned counsel for the respondent relied on the judgment in the case of “**B.Sugendra Das Vs. State of Kerala and others**” in **Crl.M.C.No.3289 of 2015**, for the proposition that, there is no requirement that the complainant must specifically allege in the complaint that, there was a subsisting liability. Section 139 of the Negotiable Instruments Act,



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provides that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for discharge, in whole or in part, of any debt or other liability. The complainant is entitled to take advantage of this statutory presumption. It is settled law that, at this stage, the Court is not justified in embarking upon a roving enquiry. The Court could not also go into the merits and come to a conclusion that, there was no existing debt or liability. At the initial stage of the proceedings, the High Court is not justified in entertaining and accepting a plea that, there was no debt or liability. The defense taken by the accused although appears to be plausible should not be taken into consideration for exercise of the jurisdiction under Section 482 of the code. Whether there was outstanding liability or not, is a question of fact, which could be determined only by the trial Court after recording evidence of the parties. The defence of the accused cannot be considered at that stage. The Court considering the prayer for quashing a complaint cannot adjudicate upon disputed questions of fact.

15. Judgment reported in **[2002 1 SCC 234]** in the case of



“M.M.T.C. LTD and another Vs. Medchil Chemicals and Pharma (P)

Ltd” is relied on for the proposition that, the power of quashing criminal proceedings should be exercised very sparingly and with circumspection. It is settled law that at this stage the Court is not justified in embarking upon an enquiry, as to the reliability or genuineness or otherwise of the allegations made in the complaint. The inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. At this stage, the Court could not go into merits and/or come to a conclusion that there was no existing debt or liability.

16. In reply to the submissions, learned counsel for the petitioners submitted that, the issue of limitation can be taken at any time, even without the pleadings. He reiterated that, when the company is not a party to the settlement and the settlement was executed for a time barred debt, issuance of cheques for the time barred debt and initiation of proceedings under Section 138 of Negotiable Instruments Act for the return of cheques, issued for time barred debt cannot be maintained.

17. Considered the rival submissions and perused the records.



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18. From the facts narrated above and submissions made by learned counsel appearing for the parties, there is no dispute in this case with regard to the execution of settlement dated 24.11.2020 between the 2nd petitioner and respondent, issuance of seven cheques, in terms of settlement deed and dishonouring of these cheques.

19. The main submission of learned counsel for the petitioners is that, 1st petitioner company is not a party to this settlement deed and therefore, the settlement will not bind the 1st petitioner. When it would not bind the 1st petitioner, issuance of cheque by the 2nd petitioner for the alleged debt is not legal and enforceable.

20. Second submission is that, as per the settlement, respondent said to have provided financial and other expert assistance from 2005 to 2012 and therefore, petitioners are liable to pay a sum of Rs.2 crores to the respondent. The liability relates to the period 2005 to 2012. The period of limitation for any money claim is three years. If that is considered, the



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limitation for recovery of money by the respondent would come to an end in 2015. If any acknowledgment of liability is given, that must have been given before 2015. On the other hand, the settlement had been entered only on 24.11.2020, beyond the period of limitation without any acknowledgment of liability, within the period of limitation.

21. As already stated, learned counsel for the respondent relied on the Judgment reported in **[2022 LiveLaw (SC) 879]** in the case of ***“Yogesh Jain Vs. Sumesh Chadha”*** for the proposition that, the issue as to issuance of cheque for a time barred debt cannot be adjudicated under Section 482 of the CrPC. It is clear from this Judgment, the question, as to whether the impugned cheque was issued for a time barred debt or not, is a matter of evidence and it cannot be adjudicated under Section 482 of the CrPC. Moreover, as pointed out by the learned counsel for the petitioners, there is no pleadings raised in the quash petition, in this regard.

22. From the materials produced and discussed above, it is clear that 2nd petitioner is a man-incharge of the affairs of 1st petitioner company.



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Even in the affidavit filed in the bail petition for seeking bail, he admitted that, he is the person authorized and he is the Chief Operating Officer and major stakeholder in all the companies. He filed the affidavit on his behalf and on behalf of other accused. The impugned cheques were issued in the name of 1st petitioner company signed by 2nd petitioner. Therefore, petitioners cannot claim that, the agreement dated 15.06.2005 would not bind the 1st petitioner and 3rd petitioner.

23. It is seen from the Judgments relied on by respondent reported in **[2002 (1) SCC 234]** in the case of “*M.M.T.C. LTD and another Vs. Medchil Chemicals and Pharma (P) Ltd*” that, there is a legal presumption under [Section 139 of Negotiable Instruments Act](#), that the cheque was received by the holder for the discharge, in whole or in part, of any debt or liability. The High Court was not justified in entertaining and accepting a plea that, there was no debt or liability. This Court cannot adjudicate all disputed facts.

24. It is also seen in the Judgment reported in **[2012 (7) SCC 621]**



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in the case of “*Sangeetaben Mahendrabhai Patel Vs. State of Gujarat and another*”, that continuations of criminal prosecution and filing a case under Section 138 of Negotiable Instruments Act, cannot be considered as double jeopardy.

25. In the light of the proposition of the law laid down in the Judgments relied above by the learned counsel for the respondent and that, there are certain disputed facts, with regard to the validity of agreement dated 15.06.2005 and as to whether the cheque was issued for time barred debt, this Court in the light of the aforesaid Judgments, is of the considered view that, these disputed facts can only be decided by the trial Court, on the basis of the evidence to be produced. This Court cannot embark on such an enquiry. This court finds that, there is no merits in this case, this petition seeking for quashment of the complaint in S.T.C.No.2032 of 2021 on the file of Fast Track Court II, Metropolitan Magistrate Court, Egmore, Allikulam Complex, Chennai cannot be entertained and therefore, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed.



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Index: Yes
Internet: Yes/No
Speaking/Non speaking order
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G.CHANDRASEKHARAN, J.

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To

The Fast Track Court-II,
Metropolitan Magistrate Court,
Egmore, at Allikulam Complex,
Chennai – 600 003

Pre-delivery Order in
Crl.O.P.No.23750 of 2022

24.02.2023