IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2023

CORAM:

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

CRL.O.P.No.32919 of 2019 and
Crl.MP.Nos.18154 & 18155 of 2019

V.S.Karthick ... Petitioner

Vs.

M/s.National Collateral Management Services Ltd.,
represented by their Regional Manager,
Mr.S.Jayaraman,
No.213/1-P, Thiru-VI-KA Street,
Manapakkam Main Road,
Gergambakkam,
Chennai-600 122. ... Respondent

**PRAYER**: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records in S.T.C.No.65 of 2019 pending on the file of the Judicial Magistrate Fast Track Court (FAC), Vellore District and quash the complaint.

For Petitioner : Mr.R.Balakrishnan

For Respondent : Mr.A.Suresh

**ORDER**

This criminal original petition has been filed to quash the proceedings in S.T.C.No.65 of 2019 pending on the file of the Judicial Magistrate Fast Track Court (FAC), Vellore District taken cognizance for the offences under Section 142 and 138 of Negotiable Instrument Act.

2. Heard the learned counsel appearing on either side.

3. The respondent lodged a complaint for the offence punishable under section 138 of Negotiable Instruments Act as against the petitioner alleging that the respondent had entered into Master Collateral Management Agreement with the banks such as IDBI, Axis Bank, State Bank of India and Karur Vysya Bank. The petitioner had applied for loan from the bank by pledging his Agro Commodities. The banker has to sanction loan based on the Commodity Arrival Reports issued by the respondent. Accordingly, the petitioner entrusted his commodities to the respondent's custody and stored in godown. After verification, the respondent issued Commodity Arrival Reports to the banker and the petitioner was sanctioned loan and received loan amount. However during stock verification by the respondent, it was found that there was a shortage of stock and certain stocks have been replaced

contrary to the contents of the reports, to which the respondent is liable to pay the amount to the tune of disbursal of loan amount. During the stock verification, the petitioner was present and he admitted the shortage and pleaded not to pursue with any case and he promised to pay the said amount for shortage of commodities. Accordingly, the petitioner issued cheque for a sum of Rs.1,45,89,000/- dated 04.12.2018. The said cheque was presented for collection and the same was returned dishonoured for the reason "Funds insufficient". After causing statutory notice, the respondent lodged a complaint.

4. On perusal of the records revealed that the respondent has entered into the Master Collateral Management Agreement with the bankers. Whenever the person who applied for loan by pledging their Agro commodities, they have to deposit the Agro Products with the respondent herein and on receipt of the same, the 2nd respondent used to issue Commodity Arrival Reports to the concerned banks. On receipt of the said report, the banker will sanction and disburse the loan amount. Accordingly, the petitioner herein deposited his Agro Commodities with the respondent and availed loan from the banker i.e., IDBI, Arani Branch. In fact while availing loan, the bank also deposited his title deeds by Memorandum of Title Deeds and the same was

registered vide Document No.4889 of 2018. Thereafter the respondent conducted stock verification and found that there were shortage of stock. Only after verification of products, the respondent issued Commodity Arrival Reports to the concerned bank. Therefore, whatever the loss or shortage, it is up to the respondent to compensate in favour of the bank. Since the banker already had entered into an agreement of Master Collateral Management Agreement, accordingly, the respondent is answerable to the banker. However, the case of the respondent is that during stock verification, the petitioner was also present and he agreed to compensate the shortage of Agro Products, that too to the tune of Rs.1,45,89,000/-.

5. On perusal of documents, the petitioner availed only Rs.30,00,000/- loan by pledging his Agro Products. As stated above the petitioner also mortgaged his title deeds by way of Memorandum of Deposit of Title Deeds. That apart, for non repayment of the loan, the banker i.e., IDBI Bank, Arni branch had taken steps to realize the loan amount by auctioning the property deposited by the petitioner. On perusal of the reply notice sent by the petitioner dated 25.01.2019, the petitioner categorically stated that except depositing Agro Products with the respondent, there was no agreement between them with regards to shortage of goods or loss of goods. Whatever the Agro

Products deposited by the petitioner, the respondent has to verify and issue Commodity Arrival Reports to the concerned bank. After due verification of the Agro Products deposited by the petitioner, the respondent issued Commodity Arrival Reports to the banker. On receipt of the same, the banker sanctioned loan in favour of the petitioner. Therefore, the petitioner is no way connected with the respondent, except depositing the Agro Products. The petitioner is no way responsible for loss or shortage of Agro Products in the godown maintained by/owned by the respondent. Therefore, no cheque was issued in favour of the respondent by the petitioner. While availing loan with banker, he issued cheque for security purpose, in turn the said cheque was misused by the respondent in connivance with the banker. Therefore, now the petitioner is facing false prosecution initiated by the respondent. That apart, alleged cheque was not issued for any legally enforceable debt.

6. Admittedly, no amount was disbursed by the respondent and the petitioner no need to issue any cheque in favour of the respondent. Therefore in order to escape from the liability, that too to the tune of Rs.1,45,89,000/- to the banker, by utilizing the illiteracy of the petitioner, misused the cheque issued in favour of the banker and initiated proceedings under section 138 of Negotiable Instruments Act.

7. In view of the above, the impugned proceedings is liable to be quashed. Accordingly, the entire proceedings in S.T.C.No.65 of 2019 pending on the file of the Judicial Magistrate Fast Track Court (FAC), Vellore District is quashed and this Criminal original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

12.10.2023

Index :Yes/No
Internet : Yes/No
Speaking order/non-speaking order
lok/gvn

To

1.Mr.S.Jayaraman,
Regional Manager,
M/s.National Collateral Management Services Ltd.,
No.213/1-P, Thiru-VI-KA Street,

Manapakkam Main Road,
Gergambakkam,
Chennai-600 122.

2. The learned Judicial Magistrate Fast Track Court (FAC),
Vellore District

**G.K.ILANTHIRAIYAN, J.**

lok/gvn

CRL.O.P.No.32919 of 2019

12.10.2023