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Crl.O.P.Nos.7099, 7103, 7108, 7112 & 7115 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.Nos.7099, 7103, 7108, 7112 & 7115 of 2022
and
Crl.M.P.Nos.4051, 4053, 4054, 4055 & 4056 of 2022

1. Bell Finvest India Ltd.,
rep. by Managing Director
Bhupesh Rathod

2. Mr.Bhupesh Rathod,
Managing Director,
Bell Finvest India Ltd.

3. Mr.Chirag Rathod,
Managing Director,
Bell Finvest India Ltd.

... Petitioners in all
Crl.O.P.s

Versus

Vivriti Capital Private Ltd.,
rep. by its Power of Attorney
Ms. Vamsi Vasudevan

... Respondents in
all Crl.O.P.s



Crl.O.P.Nos.7099, 7103, 7108, 7112 & 7115 of 2022

PRAYER in Crl.O.P.No.7099 of 2022 : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in C.C.No. 30 of 2020 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

PRAYER in Crl.O.P.No.7103 of 2022 : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in C.C.No. 31 of 2020 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

PRAYER in Crl.O.P.No.7108 of 2022 : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in C.C.No. 32 of 2020 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

PRAYER in Crl.O.P.No.7112 of 2022 : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in C.C.No. 33 of 2020 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

PRAYER in Crl.O.P.No.7115 of 2022 : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in C.C.No. 34 of 2020 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.



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For Petitioners in
all Crl.O.P.s : Mr.K.S.Shankar Chakrapani

For Respondent in
all Crl.O.P.s : Ms.Abitha Banu

COMMON ORDER

The petitioners herein are the accused in C.C.Nos.30 to 34 of 2020 and they have preferred these Criminal Original Petitions seeking to quash the said complaints pending on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai, which were filed by the respondent/defacto complainant by invoking Sec.200 r/w Sec.190(a) of Cr.P.C. and Sec.25 of Payment and Settlement System Act, 2007 read with the provisions contained in Chapter XVIII of the Negotiable Instruments Act, 1881.

2. Heard both sides.



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3. Brief facts of the case is as follows :-

The 1st petitioner/A1 was incorporated on 7th September 1994 as a closely held public limited company under the Companies Act, 1956 and it is a non-banking financial company with due registration from Reserve Bank of India. The 1st petitioner is represented by its authorised Director, the 2nd petitioner/A2. The 1st petitioner/A1 company was set up to provide financial support to the aspirations of entrepreneurs since the year 1994 and availed NBFC license in the year of 2008. Since then, the 1st petitioner grown up and had evolved into one of the finest integrated financial solutions provided to SME's/MSME's in the country. While being so, during January-February 2019, the petitioners were approached by the respondent stating that it has huge finances at its disposal and they were engaged in financing small NBFCs to support and grow their businesses.

4. According to the petitioners, the respondent collected all the relevant data and important information regarding 1st petitioner/A1



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company. After verifying the same, they have issued term sheet approving upto Rs.20 crores credit facility on 14.03.2019. Thereafter, certain inter communication between them and the respondent insisted Rs.20 crores charge in favour of them to be registered with Registrar of Companies through MCA Portal and for the repayment of the said amount in instalments, NACH Mandate known as BELLTL052019 was created by the 1st petitioner herein with the condition that the same is valid until cancelled. The respondent also accepted the conditional NACH mandate and agreed to comply with the terms of NACH mandate. But contrary to the terms, the respondent in total breach of its promise and contractual obligation from the first day and had only disbursed a sum of Rs.1 crore on 17.05.2019. Accordingly, totally they have paid a sum of Rs.6,00,000/- only.

5. The contention of petitioners is that when the respondent did not disburse the requested amount when required by the 1st petitioner company, they have sent an email informing that there are no funds available with it to disburse in the month of June 2019, which would



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prove that the respondent fraudulently misrepresented in respect of its financial wherewithal and ability to lend funds to 1st petitioner company as per agreed terms. In pursuance of the same, the respondent caused substantial loss to the 1st petitioner company. In the meanwhile, the first EMI in relation to the amounts disbursed so far by the respondent, the amount got due, which was duly honoured and paid by the 1st petitioner company to the respondent on the respective dates promptly till Judge 2019, despite gross breach on the part of respondent and its total failure to comply with contractual terms. Thereafter, inspite of all the gross default and persistent breach on the part of respondent, the 1st petitioner company duly honoured its commitment of repayment of monthly EMI and paid further EMI for the month of July 2019. So, despite of agreeing to disburse a total sum of Rs.20 crores, the respondent kept delaying the disbursement dates and they have totally breached and violated the contractual terms as agreed upon in he Facility Agreement between the parties and disbursed only a sum totally Rs.6,00,000/- as against Rs.20 crores. Subsequently, the 1st petitioner company had terminated the Facility Agreement and all other documents including NACH Mandate



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and simultaneously, the 2nd and 3rd petitioners have also cancelled their personal guarantee.

6. The learned counsel for petitioners would submit that despite the information to the respondent company about the termination of agreement and cancellation of NACH mandate, the respondent company illegally tried to activate a request of payment under the said cancelled NACH mandate, which was returned unpaid citing reason “Mandate cancelled on customer request/MD 21” and subsequently, the respondent had initiated proceedings under the Negotiable Instruments Act, which is erroneous one. If at all any liability between petitioners and respondent, the same has to be worked out before the civil court. Further, they have already filed a civil suits in C.S.Nos. 559 and 650 of 2019 and both suits were decreed in their favour. But, contrary to the decree, they have given a criminal colour to the civil dispute. Therefore, they prayed to quash the proceedings stating that the complaints are not maintainable, since because the facility agreement dated 15.03.2019 itself is determinable in nature and the clause mandating the issuance of NACH mandate is a part



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of the determinable agreement, which cannot be enforced as per law.

Furthermore, he has also raised a point that this court has no jurisdiction, since the refusal to honour the mandate issued by the bank was only at Mumbai. Therefore, the courts at Chennai has no jurisdiction.

7. By way of reply, the learned counsel for respondent would submit that the respondent is having its registered office at Chennai and maintaining its account with the Bank at Chennai, wherein the cheque was presented, as such, this Court is having jurisdiction and they have also contended that purposely, the petitioners have violated the terms. Therefore, they have initiated proceedings, which is permissible under law.

8. On perusal of entire facts, it seems that the cancellation of NACH mandate is not maintainable as a breach of term collected by the respondent, which has to be proved before the civil forum and not through the criminal proceedings. So, at this stage, this Court is not inclined to quash the proceedings, since the complaints required detailed



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evidence and it is a matter for trial. However, both parties are directed to raise issue relating to the jurisdiction. Liberty is granted to the petitioners to raise all their defence before the trial court. Accordingly, these Criminal Original Petitions are dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

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T.V.THAMILSELVI, J.

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