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CrI.O.P.No.16180 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2024

CORAM:

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

CrI.O.P.No.16180 of 2022
and
CrI.M.P.Nos.9267 & 9270 of 2022

Abdul Wahab
Proprietor, M/s.Global Enterprises

.. Petitioner

Versus

M/s.Vasavi Marketing,
Represented by its Power Agent
Mr.R.Nagendra Prasad

.. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for entire records in pursuant to S.T.C.No.14 of 2021 pending on the file of Judicial Magistrate Court, Ranipet and quash the same.

For Petitioner : Mr.T.P.Prabakaran

For Respondent : Mr. H. Mohamed Farook



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ORDER

This Criminal Original Petition has been filed seeking to quash the Charge sheet in S.T.C.No.14 of 2021 pending on the file of Judicial Magistrate Court, Ranipet, for the offence under Section 138 read with Section 142 of Negotiable Instrument Act, 1881.

2. This petition has been filed to quash the cheque complaint mainly on the ground that the management of the petitioner company was taken over by the Corporate Debtor appointed by National Company Law Tribunal, Division Bench I, Chennai and there was a moratorium under Section 14(1) of the Insolvency and Bankruptcy Code, 2016. Therefore, it is submitted that no complaint is maintainable as against the petitioner company and its Directors.

3. At the outset, I am unable to persuade to the submission of the learned counsel. Hon-ble Apex Court in the case of ***P. Mohanraj and Others vs. Shah Brothers Ispat Pvt. Ltd.***, reported in ***[2021 SCC Online***



SC 152/, after dealing with various judgements of the Apex Court in paragraph 103 held as follows:

”103. Since the Corporate debtor would be covered by the moratorium provision contained in Section 14 of the IBC, by which continuation of Section 138/141 proceedings against the corporate debtor and initiation of Section 138/141 proceedings against the said debtor during the corporate insolvency resolution process are interdicted, what is stated in paragraphs 51 and 59 in Aneeta Hada (supra) would then become applicable. The legal impediment contained in Section 14 of the IBC would make it impossible for such proceeding to continue or be instituted against the corporate debtor. Thus, for the period of moratorium, since no Section 138/141 proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Section 141(1) and (2) of the Negotiable Instrument Act. This being the case, it is clear that the moratorium provision contained in Section 14 of the IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act.--



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As the moratorium applies to the Corporate Debtor, no proceedings under 138/141 can continue or be initiated because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Section 141(1) and (2) of the Negotiable Instrument Act. This being the case, it is clear that the moratorium provision contained in Section 14 of the IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act.

4. On perusal of entire facts, it reveals that the petitioner being a Proprietor of the petitioner company, has to be prosecuted as per the above judgment. Accordingly, the complaint as against the petitioner's company alone is quashed and in respect of petitioner, this petition to quash is dismissed. Accordingly, this Criminal Original Petition is dismissed.

5. At this stage, the learned counsel for the petitioner citing the age of the petitioner namely Abdul Wahab seeks exemption of personal



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appearance before the Trial Court. Considering the same, personal appearance of the petitioner before the Trial Court is dispensed with and she shall appear before the trial court as and when required. Accordingly, the Criminal Miscellaneous Petition in CrI.M.P.No. 9270 of 2022 is ordered. However, the Trial Court shall proceed as against the petitioner and dispose of the same in accordance with law. Furthermore, the petitioner is directed to work out his remedy and raise all his defence before the trial court. Consequently, connected Criminal Miscellaneous Petition in CrI.M.P.No.9267 of 2022 is closed.

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T.V.THAMILSELVI, J.

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