



CrI.OP.No.17889 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Original Petition No.17889 of 2024
and CrI MP Nos.10612 & 10615 of 2024

B.Venkatesan

... Petitioner

Vs.

T.Saravana

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to call for the records in S.T.C.No.63 of 2020 before the learned Judicial Magistrate cum Fast Track Judge-II, Erode for the alleged offence under Section 138 of Negotiable Instrument Act, 1881, and quash the said S.T.C.No.63 of 2020 as against the petitioner.

For Petitioner : No appearance

For Respondent : Mr.V.S.Kesavan



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ORDER

WEB COPY No representation for the petitioner.

2. The petition has been filed to quash the criminal complaint instituted under Section 138 of Negotiable Instrument Act and pending as STC No.63 of 2020 on the ground that the petitioner herein as the Managing Director of M/s.National Sewing Thread Co. Ltd. Though the signatory of the subject cheque, the Company for which he has issued the cheque is now under the resolution process and Insolvency Professional one Mr.V.Duraisamy, has been appointed to manage the affairs of the Company and therefore, the complaint under Section 138 of Negotiable Instrument Act, against the petitioner will not sustain.

3. The learned counsel appearing for the respondent complainant submitted that as far as the moratorium under Section 14 of the Insolvency and Bankruptcy Code, will be applicable only to the Corporate Debtor and not to the individuals and this issue has been settled by three Judges Bench of the Hon'ble Supreme Court in *Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India Limited*, reported in *2023 (1) MWN (Cr.) DCC 145 (SC)*.



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4. A perusal of the complaint indicates that this petitioner is arrayed as A2, who is the signatory of the cheque and Cheque is dated 26.09.2019. The insolvency proceedings before the NCLT, Chennai, issued that prior to the issuance of the cheque, the Insolvency Professional has been appointed vide order dated 29.08.2019. As pointed out by the Hon'ble Supreme Court in the judgment cited above, proceeding against the petitioner in his individual capacity cannot be quashed in the light of the insolvency proceedings pending before the NCLT, since the proceedings under Negotiable Instrument Act can continuous simultaneously during the pendency of the proceedings under Insolvency and Bankruptcy Code has held by the Hon'ble Supreme Court.

5. Hence the Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petitions are closed.

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jv

Index: Yes/No



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Internet: Yes/No

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To

1. The Judicial Magistrate cum Fast Track Judge-II,
Erode.
2. The Public Prosecutor,
High Court of Madras



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Dr.G.JAYACHANDRAN,J.

jv

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