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Crl.O.P.Nos.17815 & 19097 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.Nos.17815 & 19097 of 2022

and

Crl.M.P.Nos.11274 & 12614 of 2022

Alok Chopra

Director, M/s.ICD Health Care India Pvt., Ltd.

4, Khullar Farm Village,

Mehrauli, Sultanpur,

Gadaipur Road,

Delhi-110 030.

... Petitioner / A3 in Crl.O.P.No.17815 of 2022

Sanjay Sachdeva,

(Director /Authorised Signatory of the cheque)

108, Sainik Farms,

New Delhi-110 062.

... Petitioner / A2 in Crl.O.P.No.19097 of 2022

Vs.

Kotak Mahindra Bank, having its branch office at

Samson Towers, 4th Floor,

No.402, 403, Pantheon Road,

Egmore, Chennai-600 008,

Represented by its Associate Vice President

Mr.V.Ragothaman

... Respondent in both Crl.O.P.s



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Common Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C., praying to quash the complaint in STC.No.3 of 2022 on the file of the X Small Causes Court, Chennai.

For Petitioner in both Crl.O.P.s : Mr.M.S.Seshadri

For Respondent in both Crl.O.P.s : Mr.T.Shanmugananda Vijayakumar

ORDER

The petitioners have filed these petitions to quash the STC.No.3 of 2022 on the file of the learned X Small Causes Judge, Chennai, having been taken cognizance for the offences punishable under Sections 138 of the Negotiable Instruments Act, 1881.

2. The case of the prosecution is that during the course of its business, the 1st accused approached the complainant seeking financial facilities. Based on this request, the complainant provided financial facilities vide a sanction letter dated 08.05.2018, towards part discharge of admitted and undisputed liabilities. In terms of the financial facilities, the 1st accused



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issued cheques signed by the 2nd accused, acting in the capacity as Director / Authorised signatory of the 1st accused, drawn on Kotak mahindra Bank, for a sum of Rs.1,60,00,000/- (Rupees One Crore Sixty Lakhs only), dated 24.09.2019, in favour of M/s.Kotak Mahindra Bank Ltd., The complainant presented the cheques for collection, but they were returned with an endorsement of 'funds insufficient'. Despite the notice issued to the petitioners, all the accused failed to make the payment, thereby, committing an offence punishable under Section 138 of Negotiable Instruments Act 1881.

3. The learned counsel for the petitioners submitted that the petitioner / A2 is an authorised signatory / director of the 1st accused company, and petitioner / A3 is a former director of ICD Health care India Pvt. Ltd.,. The complaint was originally filed as C.C.No.31 of 2020 before the Fast Tract Court No.IV, Metropolitan Magistrate Court, Georgetown, Chennai and was transferred to the file of X Small Causes Court, Chennai and re-numbered as STC.No.3 of 2022. He further submitted that the complaint has been filed in Chennai where the cheque dated 24.09.2019 was presented. The 1st accused is a company with its registered office in New Delhi. The petitioner / A3



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was arraigned in the capacity of Director of the 1st accused company on

17.11.2018. He served as a Director for only a period of 3 ½ months and thereafter, resigned on 05.03.2018. The petitioner/ A2 issued an undated blank instrument cheque without any date or amount being mentioned on the cheque. This is adequately established by the fact that A2 resigned as Director from the company with effect from 07.08.2018, almost 13 months prior to the date of the cheque. Therefore, no liability can be imposed on the petitioners for the dishonour of the undated cheque, which occurred more than a year after his resignation from the company. A reading of the impugned complaint shows that the genesis of the complaint was a financial facility availed by the 1st accused from the complainant in May 2018 and it was sanctioned via letter dated 08.05.2018. The petitioners retired two months before this transaction, and thus could not have been responsible in any manner for the dishonour of the cheque. The cheque dated 24.09.2019, which is the subject matter of the impugned complaint, was not signed by A3 and there are no averments in the complaint specifying what role was played by A3 in the day-to-day affairs of the company.



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4. The learned counsel for the respondent submitted that at the time of the loan's approval, the petitioner was a director, and subsequently, he resigned, making the active director, A4, unavailable as he is abroad. Consequently, the defacto complainant is unable to initiate the recovery process. Furthermore, although the petitioner resigned from the post of Director, they still act as a promoters of the company and hold positions of responsibility within the company, therefore, they are bound to pay the amount. Despite Ashok Chopra's resignation in the month of May, according to the defacto complainant he still holds a position as a promoter of the Company. All the facts will be proved during the trial, and considering the amount involved being more than Rs 2 Crores, this Court declines to quash the proceedings in STC.No.3 of 2022 on the file of the X Small Causes Court, Chennai, against the petitioners.

5. However, liberty is granted to the petitioners to pursue their remedy before the trial Court in the manner known to law. Considering the age of the petitioners, their personal appearance before the trial Court is ordered to be dispensed with, and they are directed to appear if their presence is necessary.



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T.V.THAMILSELVI, J.

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6. Accordingly, these Criminal Original Petitions are dismissed.

Consequently, the connected miscellaneous petitions are closed.

12.02.2024

Index: Yes/ No

Neutral Citation: Yes/No

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