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Crl.O.P.No.19983 of 2023
and
Crl.M.P.Nos.13561 & 13562 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :30.07.2024

Pronounced on :01.08.2024

CORAM:

THE HONOURABLE DR JUSTICE G.JAYACHANDRAN

Crl.O.P.No.19983 of 2023

and

Crl.M.P.Nos.13561 & 13562 of 2023

1.AMY International
Rep.by its Proprietor,
Mr.A.Mohammed Yassin,
having office at
No.T/B-99, Anna Fruit Market,
Koyambedu, Chennai 600 092.

2.A.Mohammed Yassin, M/A 42 years,
S/o Mr.Abdul Rahim
Proprietor, AMY International
No.AP-807, G Block 1st Street,
Anna Nagar, Chennai 600 040.

.. Petitioners

/versus/

M/s BMW Global Ventures Pvt.Ltd.,
Rep.by its Executive Director,
Mr.P.B.Mohideen Abdul Khadar,
having office at Plot No.11,
2nd Lane, Officers Colony, Varadarajapuram,
Velachery, Chennai 600 042.

.. Respondent



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Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for records pertaining to the case in S.T.C.No.2921 of 2023 on the file of the learned XXVI Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioners :Mr.C.P.Palanichamy

For Respondents :Mr.A.Nagarajan for
Mr.M.Mathan Raj

ORDER

The petitioners herein are the accused in the private complaint initiated under Section 138 of Negotiable Instruments Act,1881.

2. This petition to quash the complaint is filed on the ground that the cheques were not honoured on his instruction to stop payment, since there was no enforceable liability payable to the complainant. In spite of detailed reply to the statutory notice denying liability, the post dated cheques given has been misused even after clearing the debt. The complaint filed against the proprietary firm as well the proprietor is also not in accordance with law.

3. The Learned Counsel appering for the petitioners submit



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that, the complainant and the petitioners are in trade of importing foreign fruits for sale in local market. They are in this business for more than 15 years maintaining open mutual running account. In the midst of 2021, after the covid pandemic, they mutually agreed to close the business and reconciled the account. As on 07/09/2021 a sum of Rs 42,30,005/- was due and payable by the petitioners to the complainant. During the course of business, the petitioners stood guarantee for the complainant in respect of imports made by the complainant company from Elshark for \$ 6502 and Prime Egypt of \$ 1580.

4. After making further payment to the complainant, as on 19/12/2021, the balance due was Rs.27,30,005/-. On the insistence of the complainant, the petitioners gave two post dated cheques bearing No: 001105 and 001106 drawn on ICICI Bank, Koyambedu Branch for Rs.27,30,000/- and Rs.74,795/- respectively towards the principle and interest. The complainant however failed to pay Elshark and Prime Egypt as agreed. Hence, the petitioners paid Rs.9,30,005/- and cleared the dues on 30/03/2022. While so, the post dated cheques given to the



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complainant on his promise that he will clear the dues of Elshark and Prime Egypts were presented for collection, without any enforceable liability.

5. The Learned Counsel for the complainant/respondent submitted that the complaint explicitly mentions the circumstances how the liability arose and the circumstances in which the cheques were issued. Between 07/09/2020 to 30/11/2020 fruits worth Rs.1,71,55,847.60/- supplied to the petitioners firm. In turn, the petitioners firm has paid only Rs.1,59,67,067/- and for the balance outstanding of Rs 62,61,620/-, as part discharge of the liability, the two cheques for Rs.27,30,000/- and Rs.74,795/- issued on 31/03/2022. These two cheques on presentation, returned with endorsement “payment stopped by drawer”. The petitioners tried to make out a defence relying upon certain documents, which are in fact not relevant for the case. Even if it is otherwise relevant, it is to be tested in the trial and not in the quash petition.



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6. On perusal of the complaint and the reply notice given by the petitioners denying liability, this Court is of the opinion that, having issued the cheques and admit the issuance of the cheques, it is the burden of the drawer to discharge the reverse burden in the trial. Disputed facts cannot be examined by the High Court in exercise of its inherent power unless it is warranted to prevent abuse of law.

7. As far the facts of this case is concerned, the petitioners admit that the cheques were issued from the account maintained in his firm's name and he is the signatory of the cheques. He claims that they are post dated cheques issued before clearing the dues and he had subsequently cleared the dues. If so, it is for him to let evidence and prove the discharge of debt.

8. The inherent power under Section 482 of Cr.P.C though wide, it has to be sparingly used. Facts disputed requires examination of witnesses and evidence. That responsibility is purely within the domain of the trial Court. Hence, this Criminal Original Petition to quash stands



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dismissed. Consequently, connected Miscellaneous Petitions are closed.

01.08.2024

Index:yes/no
Index:yes/no
Speaking order/non speaking order
Neutral citation:yes/no
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To

XXVI Metropolitan Magistrate, Egmore, Chennai.

Dr.G.JAYACHANDRAN,J.



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delivery Order made in
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