IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2025

CORAM:

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

CRL OP No. 19878 of 2022 &
Crl.MP. Nos. 13070 & 13072 of 2022

1.Gautham Sarwan Kumar Poddar
Whole time Director,
M/s. Vigneshwara Exports Limited.
2.Sarwan Kumar Poddar
Director, M/s. Vigneshwara Exports Limited.

3.Mahendra Kumar Poddar
Director, M/s. Vigneshwara Exports Limited.

... Petitioners

Vs

M/s. Anamika Enterprises Pvt., Ltd.,
Rep. by its Director,
Manmohan Kajarai,
Reg. Office at 23, Bharathi Park Road,
Coimbatore - 641 043.

...Respondents

PRAYER : This petition has been filed under Section 482 of Cr.P.C., to call for records in C.C No. 567 of 2021, pending on the file of the learned Judicial magistrate No.7, Coimbatore, Coimbatore District and quash the same.

For Petitioners : Mr. K.R. Ramesh Kumar

For Respondent : Mr. C. Deivasigamani

ORDER

This petition has been filed to call for the records in C.C No. 567 of 2021 pending on the file of the Judicial Magistrate No. 7, Coimbatore and to quash the same.

2. The respondent company started business in Textile fabrics and he was thinking of stopping the business, at that time the petitioners herein approached the respondent company/complainant that in case his company continue to have business dealing with them, his company would prosper financially. On believing their words to be true the respondent entered into a business transaction with the first petitioner herein had mutual business dealing with them. As on date, the petitioners owe a sum of

Rs.1,01,10,976/- to the respondent company. Towards, part discharge of the said liability, the cheques for Rs.17,71,002/- was issued by the petitioner herein in favour the respondent's company, which was dishonoured in respect of which separate legal proceedings have been initiated against them. They never came forward to pay up the liability, to the respondent's company despite repeated requests. Thereafter, on suspicion the respondent searched the Registrar of Companies found that the petitioners were not filed the return with ROC and the petitioner company was under liquidation in the later part of the year 2010 and that last annual returns were filed on 31.03.2010. Thereafter, the respondent requested the petitioner to pay up the outstanding liability of Rs.1,01,10,976/- none of the petitioners have paid any part of the liability to the respondent. Hence, based on the false representation the respondent's company supplied materials to the petitioners for a sum of Rs.1,01,10,976/- and despite repeated requests the petitioners have not payed the liability. Thereby, they cheated the respondent lodged the private complaint.

3. The learned counsel for the petitioners submitted that as per the allegations in the complaint the petitioner had series transaction with the

complainant from the year 2011 onwards but the present complaint was filed in the 2018 near about 7 years later. After 7 years without giving any explanation for inordinate delay the respondent filed the complaint and cognizance was taken by the learned Magistrate on file as such is liable to be quashed. Further, he submitted that the learned magistrate failed to take note of the fact that the first accused company was already been taken over by official liquidator appointed by the High Court of Bombay in CP No. 215 of 2012 by its order dated 23.03.2016 issued a summons as against the petitioners. Therefore, on the date of the filing the complaint the company was under the control of the official liquidator. Hence, proceedings initiated against the petitioners are not valid under law. Further, he would submit that transactions between the complainant/respondent and the petitioners company is commercial transactions and even the police enquiry disclosed that it purely business transaction and there is no room for cheating. Therefore, the charges levelled against the petitioners are unsustainable. Provided charges levelled against them are business transactions and there is no material evidence filed along with the complaint and therefore if the proceedings continue against the petitioners it would be a abuse of process of Court. Hence, he prayed to quash the proceedings. To support his contention the petitioner relied the judgement of the Supreme Court reported in 2023 Live Law (SC) 157 in the case of Sarabjit Kaur Vs. The State of Punjay & Anr. And relied another judgement reported in 2024 SCC Online SC 82 in the case of Sachi Garg Vs. State of U.P and Another.

4. The learned counsel for the respondent submitted that petitioners approached the complainant/respondent herein that in case his company continue to have business dealing with them, his company would prosper financially. On believing their words to be true the respondent entered into a business transaction with the first petitioner herein had mutual business dealing with them. As on date, the petitioners owe a sum of Rs.1,01,10,976/- to the respondent company. Towards, part discharge of the said liability, the cheques for Rs.17,71,002/- was issued by the accused No.1 in favour the respondent's company got dishonoured in respect of which separate legal proceedings have been inititated against them. Thereafter, on suspicion the respondent searched the Registrar of Companies(ROC) found that the petitioners were not filed the return with ROC and the petitioner company was under liquidation in the later part of the year 2010 and that last annual returns were filed on 31.03.2010.

Thereby, the petitioners cheated the respondent more than one crores from the year 2016 – 2018. Fourth accused sent an Email by acknowledging the companies' liabilities. Therefore, by submitting all the facts the learned counsel for the respondent submitted that from the inception itself petitioners approached the respondent with a common intention to cheat him. Thereby all were committed offence under Section 420 of IPC. Hence, he lodged the complaint before the police but it was not taken thereafter the respondent filed the private complaint before the Magistrate Court and thereafter Magistrate taken the case on file. Hence, he prayed to dismiss this petition

5. Considering the submissions on either side, the fact reveals that the without disclosing the liquidation proceedings the petitioners company entered into business transactions with the respondent by giving false information and fraudulently represented that their financial possession of the company was sound. By believing their words, the respondent entered into business transaction with the petitioners. As on date, more than one core rupees outstanding amount was not been paid by the accused. Hence, the respondent filed the private complaint before the Magistrate though the police complaint was not considered properly. But, the learned counsel for

the petitioners argued that since the accused company under liquidation process in the year 2010 hence the criminal proceedings as such is not maintainable. There is no material ingredient against the petitioners to attract the offence under Section 420 of IPC as alleged by the respondent. The facts reveals that from the year 2008 business transaction started between the parties but the liquidation proceedings commenced in the year 2010 but according to the respondent the petitioners suppressed the liquidation proceedings continued their business transactions thereby he met loss to the tune of of Rs.Rs.1,01,10,976/-. As per the allegation of the complaint all the petitioners committed offence under Section 420 r/w 34 IPC. Whether the business transaction was commence even after liquidation proceedings by suppressing the liquidation proceedings is subject matter of trial. Therefore, at this stage this Court is not inclined to quash the proceedings. Accordingly, this petition is dismissed. That apart, already proceedings initiated under Section 138 of Negotiable Instrument Act is pending between the parties. At this stage, proceedings cannot be quashed which requires sufficient evidence. The judgment relied by the petitioners is not supporting the present case. However, considering the age of the petitioners, the personal appearance of the petitioners is ordered to be dispensed with.

6. In the result,this criminal original petition is dismissed. Consequently, pending petition(s), if any, is/are closed.

17.06.2025

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To
1. The Judicial magistrate No.7, Coimbatore.
2. The Section Officer, V.R. Section, High Court, Madras.+

T.V.THAMILSELVI,J.
Pbl

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