



Crl.O.P.No.1377 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.1377 of 2023
and Crl.M.P. Nos.1117 & 1118 of 2023

1.M/s.Baby Maya Devi Steels
Rep. by Mr.E.N.Dinesh Raj,
No.273/2,3, Irukkur Post,
Kabilar Malai Via Velur Taluk,
Namakkal- 637 204.

2.Mr.E.N.Dineshraj

... Petitioners

Vs.

Bahubali Alloys and Metals Private Limited,
Rep. By its Managing Director,
Ishaan Bhatia, No.421 & 422, 3rd Floor, 106,
Ten Square Mall, Inner Ring Road,
Jawaharlal Nehru Salai,
Koyambedu, Chennai – 600 107.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to call for the records in STC. No.5585 of 2022 on the file of the learned Fast Track Metropolitan Magistrate-II, Allikulam, Egmore for the alleged offence under Section 138 of the Negotiable Instruments Act, 1881 and quash the same.



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For Petitioners : Mr. V.Vignesh

For Respondents : Mr. M.Dhamodhara Krishnan

ORDER

This petition has been filed challenging the entire proceedings in S.T.C.No.5585 of 2022 on the file of the Fast Track Metropolitan Magistrate-II, Allikulam, Egmore.

2. The respondent lodged a complaint as against the petitioner for the offence under Section 138 of the Negotiable Instruments Act, 1881 (in short 'NI Act') in S.T.C. No.5585 of 2022, alleging that the petitioners placed various purchase orders with the respondent. As per the purchase orders, the respondent supplied and delivered the goods as per their requirements. The respondent has been maintaining a running account in respect of the business dealing with the petitioners. The petitioners had received materials to the total value of Rs.1,47,17,755/-, after payment of some purchase orders, there was a due for Rs.80,00,000/- .

3. Towards full and final settlement of Rs.80,00,000/-, the



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petitioners had issued cheques dated 09.10.2021. All the cheques were presented for collection on 07.01.2022 and the same were returned dishonoured with an endorsement 'Funds Insufficient', after causing statutory notice as contemplated under Section 138 of NI Act, the respondent filed a private complaint before the Fast Track Metropolitan Magistrate-II, Allikulam, Egmore. After commencement of trial, while examining the respondent/accused as P.W.1 in chief, the petitioner filed this petition to quash the entire proceedings.

4. The learned counsel for the petitioner would submit that though trial commenced, if the complaint itself is not maintainable, the quash petition can be very well maintained. The cheques were issued on 09.10.2021, but all the cheques were presented for collection only on 07.01.2022. In the meanwhile, the petitioners had waived a sum of Rs.30,00,000/- by way of RTGS Transfer directly to the respondent and after presentation of cheque, a sum of Rs.40,00,000/- was paid to the respondent. However, without deducting those amounts, the respondent presented the cheques for the entire amount of Rs.80,00,000/-. Therefore, the complaint itself is not maintainable.



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5. In support of his contention, he relied upon the following judgments:

(i) *Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel and others*, reported in *MANU/SC/1294/2022*;

(ii) *Kamalesh Kumar Vs. State of Bihar and Others*, reported in *AIR/2014/SC/660*;

(iii) *A.T.Kannan Vs. The State*, reported in *Manu/TN/8554/2021* and

(iv) *Srinivasa Fashions Private Limited and Srinivasa Exports Internation and Ors Vs. N.A.S. Periyasamy*, reported in *MANU/TN/2531/2024*.

6. The learned counsel for the respondent would submit that it is disputed question of facts and as such, it cannot be considered in this petition to quash the proceedings. Though part of the amount was received before presentation of the cheques, the said amount was adjusted towards interest. Therefore, the petitioners ought to have been paid a sum of Rs.80,00,000/- and as such all the cheques were presented



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for collection. Further, the trial has been commenced and after commencement of trial, the entire proceedings cannot be quashed at this stage and it would amount to interfere with the trial.

7. Heard learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

8. In Dashrathbhai's case (referred herein supra), the Hon'ble Supreme Court, held that as per the provisions under Section 56 read with Section 15 of the NI Act, an endorsement may be made by recording the part-payment of the debt in the cheque or in a note appended to the cheque. When such an endorsement is made, the instrument could still be used to negotiate the balance amount. If the endorsed cheque when presented for encashment of the balance amount is dishonored, then the drawee can take recourse the provisions of 138 of NI Act. Thus when a part payment of the debt is made after the cheque was drawn, but before the cheque is encashed, such payment must be endorsed on the cheque under Section 56 of the NI Act. Therefore, the cheque cannot be presented for encashment without recording the part payment. If the unendorsed cheque is dishonoured on presentation, the offence under



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Section 138 of NI Act would not be attracted since the cheque did not represent a legally enforceable debt at the time of encashment.

9. In the case of *A.T.Kannan* (referred herein supra) held that when the very filing of the complaint and launching of the prosecution itself is barred under law, the Court can very well quash the entire proceedings and the parties need not undergo the ordeal of the trial. the petition to quash the entire proceedings under Section 482 of Cr.P.C/528 of BNSS 2023, is very much maintainable.

10. Therefore, the case on hand after receipt of legal notice from the respondent, the petitioner had sent reply notice dated 28.02.2022. On perusal of the reply notice, revealed that the petitioners stated they had made payments on various dates, after issuance of cheques dated 09.10.2021. Accordingly on 01.11.2021, 15.11.2021 & 29.11.2021, the petitioners made payment to the tune of Rs.10,00,000/-, after presentation of cheques, the petitioners made another payment of Rs.5,00,000/- on 24.01.2022 and another payment of Rs.5,00,000/- was paid on 23.02.2022. Therefore, before presentation of cheques, the respondent made payment to the tune of Rs.30,00,000/-.



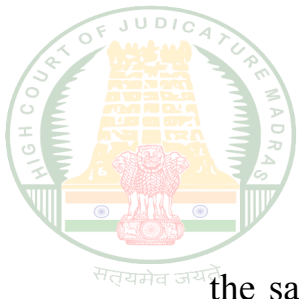
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11. Further, the specific case of the petitioners is that the cheque were issued for security purpose at the time of commencement of transaction. Even after full payment, in order to make fraudulent games, the cheques were issued for security purpose presented for collection. If these amounts were adjusted towards interest or any other due, the respondent would have issued rejoinder to the reply notice, but the respondent did not issue any rejoinder to the reply notice issued by the petitioner. It is relevant to extract the provisions under Section 56 of the NI Act.

“56. Indorsement for part of sum due.—No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.”

12. Therefore, the respondent ought to have made an endorsement with regard to the part payments of the debt and presented the cheques for the balance amount. However, the respondent failed to do so and presented all the cheques for a sum of Rs.80,00,000/- for encashment, therefore the un-endorsed cheques were presented for encashment and



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the same have returned dishonoured. Hence, the offence under Section 138 would not be attracted since the cheques do not re-present a legally enforceable debt at the time of encashment. Hence the complaint itself is not maintainable and the above judgments are squarely applicable to the case of the prosecution.

13. Therefore, though the trial is commenced by the Trial Court, by chief examination of P.W.1, this petition to quash the entire proceedings is very much maintainable under Section 482 of the Code of Criminal Procedure.

14. Accordingly, STC. No.5585 of 2022 on the file of the learned Fast Track Metropolitan Magistrate-II, Allikulam, Egmore is hereby quashed and the Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

21.02.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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