

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
Crl. Petn. No.01 of 2023

Ms. Ekata Deb

.....Petitioner

_V_E_R_S_U_S_

The State of Tripura and Others

.....Respondents

For Petitioner(s) : Ms. A. Debbarma, Advocate.

For Respondent(s) : Mr. S. Debnath, Addl. P.P.

Mr. Abhishek Puri, Advocate.

Ms. V. Poddar, Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

_O_R_D_E_R_

04/07/2023

Heard Ms. A. Debbarma, learned counsel appearing for the petitioner. Also heard Mr. S. Debnath, learned Addl. P.P. Mr. A. Puri learned counsel and Ms. V. Poddar, learned counsel appearing for the respondents.

[2] The present petition has been filed under Section-482 of the Code of Criminal Procedure, 1973 for quashing and cancelling the order dated 15.11.2022 passed by the Judicial Magistrate 1st Class, Udaipur Gomati Tripura in case No. PRC (WP) 07 of 2021, by which charges have been framed against the petitioner. Further, quashing and cancelling the subsequent charge sheet along with the FIR No. KKB(PS)/75/2019 under Sections-384, 189, 120(B), 506 of IPC, 1860 and 67A of IT Act, 2000.

[3] The fact of the case is that the petitioner herein, has challenged the order dated 15.11.2022 passed by the Judicial Magistrate 1st Class, Udaipur Gomati, Tripura in case No. PRC (WP) 07 of 2021, by which charges have been framed against the petitioner along with quashing and cancelling the charge sheet along with the FIR No. KKB(PS)/75/2019 under Sections-384, 189, 120(B), 506 of IPC, 1860 and 67A of IT Act, 2000.

[4] Ms. A. Debbarma, learned counsel appearing for the petitioner has submitted that the charges put against the petitioner is neither of heinous nature or having any kind of moral turpitude nor the allegations as to the charge sheet caused by the complainant company is shackling the sovereignty and security of the State. The above mentioned FIR and subsequent charge sheet case arises out from a counter blast for the first information herein, as complaint that was tried to be lodged under Section-154 Cr. P.C. on 18th July, 2019 by the petitioner and that

had happened to be treated as General Diary case No.26/KKB(PS)/2019 registered on 29th July, 2019.

[5] It is contended that the learned Court below has failed to appreciate that the Ex-Managing Director of OTPC, is the primary informant of the FIR in this case. The said organization-ONGC Tripura Power Company Ltd is a joint venture company having a distinct Board Members as Directors and all of them have a reporting chairman. Hence, to set the criminal law into motion as in this case an apt sanction of the said defector complainant Mr. Satyajit Ganguli approved by the Board needs to be adduced. The learned Court below has also failed to appreciate the fact that the FIR mentioned Mr. Ganguli representing himself as informant/defector complainant of the company while after filing of the police report, the charge sheet mentioned that the word complainant company repeatedly. There is no expressed mention of the subsequent relationship of the complainant company-OTPC and the defector complainant of the FIR Mr. Satyajit Ganguli.

[6] It has been further contended that the defector complainant is presently no more in Board of OTPC and also his tenure of Directorship ended before filing of the charge sheet. A new Managing Director is appointed and presently in service since 2020 at the joint venture company. The said fact of the factum of the directorship to represent the company and the cognizance on such charge sheet and the subsequent FIR is, thus, bad in law. There is an expressed missing link between the word complainant from the charge sheet and that in the FIR.

[7] Learned counsel appearing for the petitioner has brought to the notice of this Court that there is no presence of any affidavit or statement in writing sworn upon oath to make such representation by the Ex-MD, Sri Satyajit Ganguli nor any MOU/AOA being adduced with the FIR or submitted to the I.O. thereto during the investigation tenure or while filing of the charge sheet or before taking cognizance by the Magistrate till date. There is a remarkable shift of the nature of complainant from the FIR and then in the charge sheet as Mr. Ganguli being a natural person is eligible to be an informant for any public/private injury caused to him or another person while the company OTPC being a legal entity or artificial person is eligible to be a *dejure* complainant.

[8] It has been further contended that the entire allegations are not of the nature of moral turpitude and any injury under Section-44 of the IPC to any person under Section-11 of IPC, does not or may likely not to cause harm to physical

body as per Chapter-26 of IPC, Chapter-15 of IPC, 1860 etc. Any injury to any property or reputation to the juristic person as in this case does not shackle the sovereignty or security of the State concerned and hence, in this case such a representation of the State is only to thwart the petitioner as the complainant company nor the defector complainant are clean in their hands.

[9] The learned Court below has failed to appreciate that none of the charges drawn by the I.O. concede to the fact that bare perusal materials are protruding insufficiency to prosecute the petitioner without having sufficiency of evidence. All the accusations and then investigation and later charges are merely based on email communication and bears only explicit showcase of presumptions of facts being made by the I.O. without having either logical or legal relevancy. No authority of sanction or MOU/AOA has been shown both in the FIR and in the charge sheet as to the power of an Ex-MD, herein Mr. Ganguli to be the primary informant complainant of this instant case. Later on even the nature of complaint of the case shifts from a natural to juristic person, in the charge sheet no expressed reason for such shifts is also shown.

[10] The charges against the petitioner are Section-384, 506, 120B, 189 of the IPC and 67A of IT Act, 2000. Section-84 of IPC as an offence is not maintainable to be continued for trial as there is no such delivery of items as a valuable security by the defector complainant nor the *dejure* complainant OTPC is made out at any length of time. Nor the petitioner had ever sought for any valuable item to be delivered to her under any threat of injury rather she had claimed her compensation as victim of sexual harassment at workplace through an email compensation.

[11] Section-120B of IPC as an offence is not maintainable to be continued for trial as an offence to be made out, a bare minimum ingredient like meeting of guilty minds, common intension under Section-34 of IPC or having common object under Section-149 of IPC or matching of guilty intention preparation, joint/severable attempt for one motive is not found prima facie in any association of direct or parasitic accessibility with the co-accused.

[12] Section-189 of IPC as an offence is also not maintainable as this charge can also be levied in a separate investigation process with the permission of the Magistrate and needs to be conducted by a separate I.O. Such charge is alleged on the petitioner based on a portion of the single email reference made, without even taking a note on the entirety of the email communication being made by the petitioner. Section-506 of IPC is not maintainable as all the charges of threat of

injury or criminal intimidation were made out based on email communication by the petitioner rather than drawing a state prosecution against her, a preventative injunction may be drawn keeping a note on the trauma she had gone through while in association as an employee at OTPC or with another employee of OTPC, Mr. Jayanta Chakraborty.

[13] Section-67A of IT Act as an offence is not maintainable to be continued for trial as this charge has also been drawn against her based on some email communication and the entire texts related to the petitioner's original occurrences narrated by her to other statutory bodies. Now, the charge alleged itself shows the whims and caprice of the I.O. as sexually inexplicit content of whom, the defector complainant Mr. Satyajit Ganguli in the FIR or the *dejure* complainant-OTPC in the charge sheet is not disclose appropriately.

[14] Ms. Debbbarha, learned counsel appearing for the petitioner in support her case has placed her reliance upon a judgment of Apex Court in *A.C. Narayan v. State of Maharashtra and Another*, reported in (2015) 12 SCC 203, wherein, the Court has held thus:

"11. On 4th January, 2007, in view of the difference of opinion among various High courts as also decisions of this Court in *M.M.T.C. Ltd. and Anr. vs. Medchl Chemicals and Pharma(P) Ltd. and Anr.*, (2002) 1 SCC 234 and *Janki Vashdeo Bhojwani and Anr. vs. Indusind Bank Ltd. and Ors.*, (2005) 2 SCC 217 referred the matter to larger bench. The entire order of reference reads as under:

"Delay in filing counter affidavit is condoned. Leave granted.

Interpretation and/or application of Section 142(a) of the Negotiable Instruments Act, 1881, ("NI Act") is in question in this appeal which arises out of a judgment and order dated 12.8.2005 passed by a learned Single Judge of the High Court of Judicature at Bombay.

The basis fact of the matter is not in dispute.

Several cheques on different dates were issued by the applicant herein which were dishonoured. The complaint petitions in the Court of Additional Chief Metropolitan Magistrate, Bandra, Mumbai. The complaint petitions were filed in the name of the respective payees of the cheques. She also filed affidavits in support of the averments made in the said complaint petitions. Cognizance of offence under [Section 138](#) of the N.I. Act was taken against the appellant. Summons were issued. Questioning the order issuing summons by the learned Magistrate in exercise of his power under [Section 204](#) of the Code of Criminal Procedure, appellant herein filed criminal application before the High Court of Judicature at Bombay, inter alia, contending that the complaint petitions filed by the Power of Attorney Holder was not maintainable and relying thereupon or on the basis thereof the learned Magistrate could not have issued summons. The said contention has been negative by the High Court in its impugned judgment.

In the aforementioned premises interpretation of Section 142 (a) of the N.I. Act comes up for consideration before us. We may notice that in *M.M.T.C.*

and Anr. vs. Medchl Chemicals & Pharma (P) Ltd. and Anr. (2002)1 SCC 234, a Division Bench of this Court has opined:

"This Court has, as far back as, in the case of [Vishwa Mitter v. O.P. Poddar](#), (1983) 4 SCC 701 held that it is clear that anyone can set the Criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate entitled to take cognizance on the sole ground that the complainant was not competent to file the complaint. It has been held that if any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, then the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute. In the present case, the only eligibility criteria prescribed by [Section 142](#) is that the complaint must be by the payee or the holder in due course. This criteria is satisfied as the complaint is in the name and on behalf of the appellant Company.

However, in a later judgment in [Janki Vashdeo Bhojwani and Anr. vs. Indusind Bank Ltd. and Ors.](#), 2005(2)SCC 217, albeit in a different context, another Division Bench of this Court overruled the judgment of the Bombay High Court in [Pradeep Mohanbhai vs. Minguel Carlos Dias](#), [2000(1)Bom.L.R.908], inter alia opining as follows:

"Order 3 Rules 1 and 2 CPC empowers the holder of power of attorney to 'act' on behalf of the principal. In our view the word 'acts' employed in Order 3 Rules 1 and 2 CPC confines only to in respect of 'acts' done by the power-of-attorney holder in exercise of power granted by the instrument. The term 'acts' would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some 'acts' in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal is entitled to be cross-examined.

"on the question of power of attorney, the High Courts have divergent views. In the case of [Shambhu Dutt Shastri vs. State of Rajasthan](#) [1986 2 WLN 713 (Raj.)] it was held that a general power-of- attorney holder can appear, plead and act on behalf of the party but he cannot become a witness on behalf of the party. He can only appear in his own witness box on behalf of himself. To appear in a witness box is altogether a different act. A general power-of-attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the capacity of the plaintiff.

"However, in the case of [Humberto Luis v. Gloriano Armado Luis](#) [(2002) 2 Bom. CR 754] on which reliance has been placed by the Tribunal in the present case, the High Court took a dissenting view and held that the provisions contained in Order 3 Rule 2 CPC cannot be construed to disentitle the power-of-attorney holder to depose on behalf of his principal. The High Court further held that the word 'act' appearing in Order 3 Rule 2 CPC takes within its sweep 'depose'. We are unable to agree with this view taken by the Bombay High Court in [Floriano Armando](#).

It is not in dispute that there is a conflict of opinion on this issue amongst various High Courts, including the decision of Bombay High Court in [Mamtadevi Prafullakumar Bhansali vs. Pushpadevi Kailashkumar Agrawal & Anr.](#) [2005 (2) Mah. L.J. 1003] on the one hand and a decision of the Andhra Pradesh High Court in [S.P. Sampathy vs. Manju Gupta and Anr.](#) (2002) CrL.L.J. 2621), on the other. One of the questions which would arise for consideration is as to whether the eligibility criteria prescribed by Section 142(a) of the NI Act would stand satisfied if the complaint petition itself is filed in the name of the payee or the holder in due course of the cheque and/or

whether a complaint petition has to be presented before the Court by the payee or the holder of the cheque himself.

Another issue which would arise for consideration is as to whether the payee must examine himself in support of the complaint petition keeping in view the insertion of Section 145 of the Said Act (Act No. 55 of 2002).

In our opinion, in view of difference of opinion amongst various High Courts as also the decisions of this Court in *M.M.T.C. Ltd. (Supra)* and *Janki Vashdeo Bhojwani (supra)*, particularly in view of the fact that in the later case the earlier one was not noticed, an authoritative pronouncement is necessary to be given in this regard. We, therefore, are of the opinion that the matter should be considered by a larger Bench."

[15] Learned counsel appearing for the respondents in reply to the submissions made by the learned counsel appearing for the petitioner has submitted that from the records available at office of the Superintendent of Police, Gomati District, Udaipur it is evident that the case was registered based on the written complaint submitted by Sri Satyajit Ganguli, MD OTPC to the Superintendent of Police and was subsequently received at Kakraban P.S. The case was endorsed to Shri Arindam Reang, Dy. SP (HQR) of Gomati District vide office order dated 31.07.2019 for its investigation. After conclusion of investigation, the I.O. submitted charge sheet of the above mentioned case.

[16] After completion of the investigation complying all the legal formalities submitted final report against the accused petitioner. The petitioner filed a petition under Section-239 of Cr. P.C. for discharge in the Court of learned Judicial Magistrate, 1st Class and subsequently, the learned Court below after hearing both the parties dismissed the petition. Thereafter, the petitioner approached before the learned Addl. Sessions Judge and filed a petition bearing No. CrI. Rev. P. No.02 of 2022 against the order dated 24.01.2022 passed by the learned Judicial Magistrate 1st Class which is also dismissed by the learned Addl. Sessions Judge vide order dated 03.09.2022.

[17] After passing of such order, the petitioner herein, did not challenge the same before the appellate forum and ultimately charge was framed as evident from the order dated 15.11.2022 passed by the learned Judicial Magistrate 1st Class. Thereafter, the petitioner approaches before this Court by filing this present petition. It has been submitted that the accused-petitioner have not challenged the appropriate order nor the charges which have been challenged is annexed with the petition.

[18] In view of above records and having heard the learned counsel appearing for the parties, this Court is of the opinion that after fair reading of the impugned proceeding which is made available and which is under challenge do

not reflect that the petitioner has suffered any prejudice by the same, it is only a docket proceeding. For the purpose of reference the same is extracted hereunder:

“15.11.2022

Today the date was fixed for framing of charge.

Ld. App is present.

Accused person namely Prasenjit Acharjee is present along with his engaged Ld. Counsel Mr. Debi Kanta Baishnab.

Another accused person namely, Smt. Ekata Deb is physically present and on the previous date she had submitted that she would like to conduct her own case as no advocate is ready to represent her in the instant case, the matter was accordingly placed before the DLSA and accordingly, today in the first half Ld. Counsel Smt. Debjita Shib has been appointed as Ld. Legal Aid counsel of accused Smt. Ekata Deb and since today is the date fixed for framing of charge, accused copy was accordingly served to the Ld. Legal Aid Counsel for her information of this instant case and in the second half of today the charge has been framed in separate sheets of paper separately against both the accused persons and the contents of the charges are read over and explained to them in Bengali/English to which they have pleaded not guilty and claimed to be tried.

Keep the same with the case record.

Inform Member Secretary of SDLISA, Gomati Tripura and Ld. Advocate Debjita Shib.

Hence issue summons upon the C/S listed witnesses as per the following calendar.

Fix.06.03.2023 for examination of the C/S Pws. No.1 and 2.

Fix.09.03.2023 for examination of the C/S Pws. No.3 and 4.

Fix.10.03.2023 for examination of the C/S Pws. No.5 and 6.

Fix.13.03.2023 for examination of the C/S Pws. No.7 and Shri Naren Shil.

Fix.14.03.2023 for examination of the C/S Pws. Namely Sri Uttam Adhikari, Sri Pankaj Datta and Sri Arindam Reang.”

[19] After an elaborative pleadings which is a part of record and after making an elaborative submissions advanced by the learned counsel appearing for the petitioner, this Court is of the *prima facie* view that the docket proceedings cannot be challenged as the petitioner is not aggrieved and accordingly the judgments as relied by the learned counsel for the petitioner on the point of maintainability of the complaint by the company before the Court below, is not the subject matter to be decided in this petition.

[20] This Court has confined to the decision of the case only to the extent with regard to the maintainability of the quash petition and what proceedings to be quashed and since the docket proceeding cannot be form part of the order, the

question of quashing of order dated 15.11.2022 do not arise as the same is not maintainability and orally the learned counsel for the petitioner has submitted that on the said date charges have been framed and on perusal of the record in the pleadings the said charge which has been framed has not been challenged and no argument has been advanced to that affect and also the same is not a part of the record.

[21] In view of above, the present petition is devoid of merit and the same stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUDGE

A. Ghosh

