

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No.1112 of 2010

1. C.P.Prabhakaran
2. P.Chitra

.. Petitioners

vs

M/s.Arjun Amaravathi Chits (P) Ltd.,
rep.by its Proprietor
K.Radhakrishnan
through his Power of Attorney
V.B.Mani, No.30 (Old No.190)
Kutchery Road, Mylapore
Chennai-4.

.. Respondent

Criminal Revision Case filed under Sections 397 r/w 401 of Cr.P.C. as against the order dated 04.03.2010 passed by the learned IV Additional Sessions Judge, City Civil Court, Chennai in C.A.No.118 of 2009 in confirming the conviction and sentence ordered by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai-15 vide order dated 30.04.2009 in C.C.No.114 of 2003

For Petitioners : Mr.V.T.Narendiran

For Respondent : No appearance

ORDER

The petitioners are the accused in C.C. No.114 of 2003 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai-15 and they have been convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo Imprisonment Till the Raising of the Court and to pay the cheque amount of Rs.22,400/- as compensation in default, to undergo simple imprisonment for three months. As against the conviction and sentence imposed, the petitioner filed Crl. Appeal No.118 of 2009 and the first appellate Court by judgment dated 04.03.2010 confirmed the same. Aggrieved by the same, the present Criminal Revision Case is filed.

2. The case of the complainant in brief is as follows:

The petitioners/accused is a subscriber of the chit with the complainant's company and they have also prized the chit amount before the termination period; however, they have not paid the balance chit amount within the stipulated period; Hence, the complainant requested them to discharge their legal dues; for which, the petitioners jointly issued a cheque dated 03.10.2002

for a sum of Rs.22,400/-. However, when it was presented for payment, the same was returned on 07.10.2002 with the endorsement "Insufficient funds". Hence, the complaint.

3. The main ground of attack made by the revision petitioner before this Court is that the complainant is a Private Limited Company; hence, the proper and correct person has not filed the complaint. If the complainant is a proprietary concern, only the owner has to be cited as a party and not the power of attorney holder as cited in this case. Further, the cause title does not denote correctly the parties name. He would contend that the very chit company is not a registered company. Accordingly, he would submit that since the very filing of the complaint itself is wrong, the same is not maintainable.

4. Secondly, the learned counsel for the petitioners would submit that there is a discrepancy in the amount claimed. According to the petitioners, though in the complaint the cheque amount was stated as Rs.22,000/-, when the legal notice was issued the amount was mentioned as Rs.22,400/-. According to the petitioners, the cheque was given only as a blank cheque for security purpose and that the complainant has misused the same. Accordingly, he would pray for setting aside the conviction and sentence ordered by both the courts below.

5. On the other hand, the respondent/complainant would contend that the very nomenclature in the cause title does not matter, that too, when the payee's name has been correctly mentioned in the cause title, what has to be seen is as to whether the cheque in the said name, corresponds with the name in the case. Further their contention is that the respondent being a proprietary concern represented by the power of attorney under the power executed by the sole proprietor can file a complaint. According to the complainant, once the transaction is proved in accordance with law, whether the complaint is preferred by the company in the name of its proprietor or the power of attorney, is not a matter of concern as the same is valid in law.

6. As far as the second point raised by the learned counsel for the petitioners with regard to the discrepancy in mentioning the cheque amount is concerned, the contention of the respondent/complainant is that, it is only a typographical error and that cannot be taken as a mistake.

7. Heard the learned counsel for the petitioners.

8. Earlier the respondent was represented by one M/s.Span Associates. However, when the matter was taken up for final hearing, the learned counsel appearing for the respondent would submit that they have handed over the case bundle to the respondent/complainant. Therefore, this Court directed the learned counsel to send a private notice to the party stating that the matter is to be taken up for final disposal. Though as per the direction of this Court, notice has been served on the

respondent and their name also printed in the cause list, none appeared today. Since the matter is pending for the past five years, as per the judgment of the Hon'ble Supreme Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka], the matter is taken up for disposal after hearing the learned counsel for the petitioners.

9. The main argument of the petitioner is that the complainant is not a proper person to file the complaint. On a perusal of the papers, it is seen that the cause title reads as follows:

M/s.Arjun Amaravathi Chits (P) Ltd.,
rep.by its Proprietor
K.Radhakrishnan
through his Power of Attorney
V.B.Mani, No.30 (Old No.190)
Kutchery Road, Mylapore
Chennai-4. Complainant

vs

1. C.P.Prabhakaran
2. P.Chitra Respondents

According to the petitioner, the complainant is a proprietorship company. If the complaint is preferred by a Power Holder, then the company can have only Directors and not Proprietor. Accordingly, the very complaint preferred is by a wrong legal entity.

10. Now, with this in mind, if we analyse the cause title, it is stated as M/s.Arjun Amaravathi Chits (P) Ltd.,rep.by its Proprietor - K.Radhakrishnan. It is common knowledge that some of the

companies especially, if they are financiers, they call by themselves as a Limited Company. However, if it is a Private Limited Company, the same has to be registered under the Companies Act, 1956 and unless it is registered, there cannot be any legality. In this case, it is admitted by both the parties that it is a chit company, which is not a registered one. Therefore, though the nomenclature is not clear, the intention of the party should be taken note of. Here, the petitioners have issued the cheque in the name of the complainant company for their legally enforceable debt and the payee in the cheque is the person, who is before this Court. Therefore, the complainant is a proprietary concern or a private limited company or otherwise will go to the second category, unless it is proved in a manner known to law.

11. In the judgment of the Hon'ble Apex Court reported in (2008) 8 SCC 536 [Shankar Finance and Investments vs. State of Andhra Pradesh and others], the proposition is laid to the effect that insofar as the company is concerned, it can be represented by a proprietor or power of attorney holder, when

the power of attorney has been properly executed and it has held as follows:

"9. Section 142 (a) of the Act requires that no Court shall take cognizance of any offence punishable under Section 138 except upon a complaint made in writing by the payee. Thus the two requirements are that (a) a complaint should be made in writing (in contradistinction from an oral complaint); and (b) the complainant should be the payee (or the holder in due course, where the payee has endorsed the cheque in favour of someone else). The payee, as notice above, is M/s.Shankar Finance & Investments. Once the complaint is in the name of the "payee" and is in writing, the requirements of Section 142 are fulfilled. Who should represent the payee, where the payee is a company, or how the payee should be represented where payee is a sole proprietary concern, is not a matter that is governed by Section 142, but by the general law.

10. As contrasted from a company incorporated under the Companies Act, 1956 which is a legal entity distinct from its shareholders, a proprietary concern is not a legal entity distinct from its proprietor. A proprietary concern is nothing but an individual trading under a trade name. In civil law, where an individual carries on business in a name or style other than his own name, he cannot sue in the trading name. Therefore, if the appellant in this case had to file a civil suit, the proper description of the plaintiff should be "Atmakuri Sankara Rao carrying on business under the name and style of M/s.Shankar Finance and Investments, a sole proprietary concern". But we are not dealing with a civil suit. We are dealing with a criminal complaint to which the special requirements of Section 142 of the Act apply, Section 142 requires that the complainant should be payee. The payee is M/s.Shankar Finance and Investments. Therefore, in a criminal complaint relating to an offence under Section 138 of the Act, it is permissible to lodge the complaint in the name of the proprietary concern itself."

Therefore, the Hon'ble Apex Court has categorically held that for taking cognizance of an offence under Section 138 of the Negotiable Instruments Act, the requirements under Section 142 of the Act have to be fulfilled.

12. Further, in yet another case, reported in 2013(1) CTC 560 [A.C.Narayanan vs. State of Maharashtra], the Hon'ble Apex Court has held as follows:

"21. The power of attorney holder is the agent of the grantor. When the grantor authorizes the attorney holder to initiate legal proceedings and the attorney holder accordingly initiates such legal

proceedings, he does so as the agent of the grantor and the initiation is by the grantor represented by his attorney holder, and not by the attorney holder in his personal capacity. Therefore, where the payee is a proprietary concern, the complaint can be filed by the proprietor of the proprietary concern, describing himself as the sole proprietor of the payee; the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor. However, we make it clear that the power of attorney holder cannot file a complaint in his own name as if he was the complainant. In other words, he can initiate criminal proceedings on behalf of the principal."

13. In this case, it is clear from a reading of the cause title that only the payee has preferred the complaint through the Power holder. Further, the Hon'ble Apex Court has clearly held that only in civil suits, proper description of the parties have to be made; whereas in the criminal case only the requirements under Section 142 of the Act have to be complied with. In view of the above, the first point raised by the learned counsel for the petitioners that the complainant is not a proper and correct party to prefer the complaint is answered against them.

14. The second point raised by the petitioners is that there is a discrepancy in mentioning the amount, for which explanation has been offered by the respondent/complainant that it is only typographical error. Further, when the debt is proved and the cheque also has been issued, the petitioners cannot at this distant point of time raise that there is a discrepancy in mentioning the amount. It is also seen that the amount due is also only meagre, viz., Rs.22,400/-. Accordingly, this point is also answered against the petitioners.

15. Coming to the sentence awarded, it is seen that the trial Court has only awarded imprisonment till the raising of the Court, which is not required in this case. However, it has ordered to pay the cheque amount of Rs.22,400/- as compensation, which is reasonable.

16. Hence, while confirming the payment of cheque amount of Rs.22,400/- as compensation to the respondent/complainant, the sentence ordered by the trial court, viz., imprisonment till the raising of the Court and confirmed by the first appellate Court is set aside. Accordingly, the petitioners are directed to pay the compensation amount of Rs.22,400/- [Rupees twenty two thousand and four hundred only] being the cheque amount, to the respondent/complainant within a period of two months from the date of receipt of a copy of this order, if not already paid.

17. With the above direction, this Criminal Revision Case is partly allowed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vj2

To

1. The IV Additional Sessions Judge, City Civil Court, Chennai.
- 2.-do-Thro'The Principal Sessions Judge, City Civil Court, Chennai.
3. The XVIII Metropolitan Magistrate, Saidapet, Chennai-15
- 4,-do-Thro'The Chief Metropolitan Magistrate, Egmore.

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