IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2017

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.8832 of 2017
and
Crl.M.P.Nos.6337 and 6338 of 2017

1. M/s. Greenome Marketing Pvt. Ltd.
   Door No.176, DD Vyapar Bhavan,
   K.P.Vallon Road,
   Kadavanthra, Kochi-682020, Kerala.
2. Mr.Ravikrishnan Kakkirikkan
   Director – Greenome Marketing Pvt. Ltd.
3. Mr.Roopesh Plassery
   Director – Greenome Marketing Pvt. Ltd. ... Petitioners

Vs

Mrs.Geetha Sugunan ... Respondent

Prayer:Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records to in C.C.No.309 of 2016 on the file of III Fast Track Court at Saidapet, Chennai and quash the same as illegal.

For Petitioner : M/s.P.Sam Japa Singh

For Respondent : Mr.J.Kather Hussain

ORDER

This petition is filed to challenge the proceedings under Section 138 of the Negotiable Instruments Act initiated by the respondent herein.

2. The 1st petitioner is a Private Limited Company and the 2nd and 3rd petitioners are its Directors. The two grounds raised by the learned counsel for the petitioners is that the notice of dishonour was sent only to the Directors of the Company and not to the Company as such. Relying upon a judgment of this Court reported in **2014 (3) CTC 358 (T.R.Pachamuthu vs. M.M.Finance Corporation)**, he submitted that the statutory requirements of the notice are violated. The other grounds raised by the learned counsel for the petitioner is that the impugned cheques were given only as a security, which is evident from the memorandum of understanding between the petitioner-Company and the respondent / complainant. Clause 3 of the memorandum of understanding dated 15.6.2011 shows that the cheques were issued as a security for the return of amount borrowed by the 1st petitioner Company. In this connection, the learned counsel for the petitioner relied upon a judgment of this Court reported in **1999 (1) MWN (Cr.) 7 (Balaji Sea foods Exports (India) Ltd., rep. by its Director, Chalapathy and another vs. Mac Industries Ltd.)**, stating that the cheques, which have been issued and obtained as security, utilised by the complainant at the time when the dispute aroses, cannot attract Section 138 of Negotiable Instruments Act.

3. Controverting the arguments putforth, the learned counsel for the

respondent submitted that both the judgments relied upon by the learned counsel for the petitioners cannot be countenanced, in view of various other judgments of this Court as well as the Supreme Court. Saying so, the learned counsel relied upon the judgment reported in **MANU/SC/0201/1999 (M/s.Bilakchand Gyanchand Co. vs. A.Chinnaswami)** and submitted that the proceedings initiated by the complainant against the Director of the Company are illegal. He relied upon the portion of the said order, which reads as follows:

> *"4. In our opinion, the High Court erred in quashing the complaint. It is evident that proceedings were initiated by the appellant against A.Chinnaswami who happened to be the Managing Director of Shakti Spinners Ltd. The Cheques in question which were dishonoured were signed by him. The process was issued by the Judicial Magistrate in his name. We see no infirmity in the notice issued under Section 138 Addressed to A.Chinnaswami, who was a signatory of the said cheques. The High Court, in our opinion, clearly fell in error in allowing the petition under Section 482 Cr.P.C. and in quashing the complaint and setting aside the proceedings pending before the Judicial Magistrate"*

This proposition was further reiterated in a judgment of this Court in **Crl.O.P.(MD) No.180 of 2010 dated 02.09.2016 (John George vs.**

Subramanian). The observation of the learned judge is as follows:

".....

3. A perusal of the complaint reveals that notice has been issued to the petitioner / 5th accused in C.C.No.73 of 2003, in the capacity, as the Managing Director, and for other Accused Nos.1 to 4, in the capacity as Directors. In C.C.No.73/2003, the company has been added as the 5th accused.

......

5. ......

(iii) In N.Ranchachari v. Bharat Sanchar Nigam Ltd reported in (2001 (1) LW (crl) 371) in Paragraph No.17, it has been held as under:

"In M/s.Bilakchand Gyanchand Co. vs. A.Chinnaswami, this Court held that a complaint under section 138 of Act was not liable to be quashed on the ground that the notice as contemplated by Section 138 of the Act was addressed to the Director of the Company as its office address not to the company itself. The view was reiterated in Rajneesh Aggarwal v. Amit J.Bhalla. These decisions indicate that too technical an approach on the sufficiency of notice and the contents of the complaint is not warranted in the context of the purpose sought to be achieved by the introduction of Sections 138 and 141 of the Act"

6. From the decision referred to above, it is clear that notice issued in the name of Managing Director, who has not *only signed in the cheque in the capacity of Director but also the Managing Director of the Company, would be sufficient in the eye of law to entertain the complaint under section 138 of the Negotiable Instruments Act."*

4. From a perusal of the aforesaid judgments, it is clear that the notice issued to the Directors of the Company would be sufficient for the purpose of attracting Section 138 of the Negotiable Instruments Act. In the words of the Supreme Court, too technical an approach on the sufficiency notice and the contents of the complaint is not warranted in the context of the purpose sought to be achieved by the introduction of Sections 138 and 141 of the Negotiable Instruments Act.

5. With regard to the second ground raised by the petitioner that the cheques were issued by the petitioner as a security, the learned counsel relied upon the judgment reported in **MANU/SC/1021/2016 (Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited)** and submitted that the cheques that had been issued as a security, when presented, would definitely attract Section 138 of the Negotiable Instruments Act. Relevant portion of the said judgment reads as follows:

".....

8. Clause 3.1 (iii) of the agreement may also be noted:

3.1 SECURITY OF THE LOAN

The loan together with the interest, interest tax, liquidated damages, commitment fee, up front fee prima on repayment or on redemption, costs, expenses and other monies shall be secured by;

(i) xxxxx

(ii) xxxxx

(iii) Deposit of Post dated cheques towards repayment of installments of principal of loan amount in accordance with agreed repayment schedule and installments of interest payable thereon.

......

......

10. We have given due consideration to the submission advanced on behalf of the Appellant as well as the observations of this Court in ***Indus Airways*** *(supra) (Indus Airways Private Limited Vs. Magnum Aviation Private Limited-MANU/SC/0288/2014 = 2014 (12) SCC 539)), with reference to the explanation to Section 138 of Act and the expression "for discharge of any debt or other liability" occurring in Section 138 of the Act. We are of the view that the question whether a post-dated cheque is for "discharge of debt or liability" depends on the nature of the transaction. If on the date of the cheque liability or debt exits or the amount has become legally recoverable, the Section is attracted and not otherwise.*

11. Reference to the facts of the present case clearly shows that though the word "security" is used in Clause 3.1(iii) of the agreement, the said expression refers to the cheques being *towards repayment of installments. The repayment becomes due under the agreement, the moment the loan is advanced and the installment falls due. It is undisputed that loan was duly disbursed on 28th February, 2002 which was prior to the date of the cheques. Once loan was disbursed and installments have fallen due on the date of the cheque as per the agreement, dishonour of such cheques would fall Under Section 138 of the Act. The cheques undoubtedly represent the outstanding liability."*

The learned counsel also relied upon a judgment of Kerala reported in **MANU/KE/2293/2012 (Mohanachandran Nair vs. P.C.Cheriyan and another)** and reiterated the same contentions.

6. I am of the view that as the cheques were issued as a security, there is no legal bar in presenting the cheques for launching the prosecution after complying with the requisite procedures in the event of dishonour. What would be required is as to whether the cheques were presented for the outstanding liability or not. The very purpose for which the cheques issued, whether dated or undated, is only for the purpose of presenting them whenever there is a default on the part of the borrower. While that being so, it cannot be said that the cheques given by way of security are only an empty exercise and that the lender has no authority to present the cheques when there is default.

7. In view of the above findings and in the light of the judgments cited by the learned counsel for the respondent, I find no merit in this Criminal Original Petition. Accordingly, this petition is dismissed. Consequently, connected miscellaneous petitions are closed.

06.09.2017

Index: Yes/ No

Internet:Yes/No

pvs

To

The Third Fast Track Judge,
Saidapet, Chennai.

<u>M.S.RAMESH.J</u>

pvs

<u>Crl.O.P.No.8832 of 2017</u>

06.09.2017