IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2018

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Crl.O.P. Nos.20911 and 21247 of 2012

1. D.Jayapal
2. D.Anuradha ... Petitioners/Accused 3 & 4 in Crl.O.P.No.20911/2012

3. A.Archana Kumari ... Petitioner/2nd Accused in Crl.O.P.No.21247/2012

Vs.

A Team Computers,
rep.by its Proprietor,
R.Senthikumar,
and rep.by his Manager,
S.Vinayagamurthy ... Respondents in both the Crl.O.Ps

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, to call for the records in S.T.C.No.208 of 2012 on the file of Fast Track Court II Erode, and quash the same.

For Petitioners: Mr.T.T.Ravichandran

For Respondent : Mr.S,Ashok Kumar
for Mr.P.Palaninathan

C O M M O N O R D E R

The petitioners are arrayed as accused 3 and 4 in S.C.No.208/2012 on the file of the Fast Track Court II, Erode.

2. The respondent/complainant, a proprietorship concern represented by its manager S.Vinayaga Moorthy, filed a private complaint before Judicial Magistrate No.1, Erode in S.T.C.No.208/2012 under Section 200 Cr.P.C., against the present petitioners as well as Archana Educational and Charitable Trust and Archanakumari, Managing Trustee for the alleged offences punishable under Sections 138 read with 141 and 142 of Negotiable Instruments Act.

3. The case of the respondent/complainant is that the respondent/complainant who is a dealer in Computers, Laptops and its accessories, supplied goods to Archana Educational and charitable Trust, on credit basis and during the normal course of business there was a balance of Rs.69,92,660/- due and payable by the said Trustee for which the 2nd accused issued a cheque for Rs.83,49,070/- on behalf of accused No.1 with the knowledge and consent of accused No.3 and 4 (present petitioners) drawn on Bank of Baroda, Krishnagri Branch, dated 20.01.2012. When the cheque was presented for encashment by the respondent/complainant through their bankers viz., Indian Bank, Erode Branch on 20.01.2012, the same was returned for the reason "insufficient funds". Therefore, he issued a lawyer notice dated 15.02.2012 to all the accused including the present petitioners. According to the respondent/complainant, though the accused had the intimation about the notice they did not come forward to make good the payment and therefore a complaint against the accused came to be filed under Sections 138, 141 & 142 of Negotiable Instruments Act.

4. The petitioners in the present petition has alleged that the requisite ingredients under Section 141 of Negotiable Instruments Act were not satisfied by the respondent/complainant and that the complaint filed by the power of attorney holder of the respondent is not maintainable.

5. Mr.T.T.Ravichandran, learned counsel appearing for the petitioners relied on the decision in Milind Shripad Chandurkar Vs. Kalim M.Khan and another reported in (2011) 4 SCC 275 in which it is held as follows:

> e. Where the "payee" is a proprietary concern the complaint can be filed by:
>
> (i) the proprietor of the proprietary concern, describing himself as the sole proprietor of the 'payee';
>
> (ii) the proprietary concern, describing itself as the sole proprietary concern, represented by its sole proprietor; and
>
> (iii) the proprietor or the proprietary concern represented by the attorney-holder under the power of attorney executed by the sole proprietor.
>
> f. However, it shall not not be permissible for an attorney-holder to file the complaint in his own name as if he was the complainant. He can initiate criminal proceedings on behalf of the principal.

6. He would therefore contend that since the cheque was issued in favour of A Team Computers, the complaint filed by the power of attorney holder can not be maintained. In the instant

case, the complainant is the A Team Computers a Proprietorship concern and Mr.R.Senthilkumar is the proprietor. He had executed the power of attorney in favour of his Manager S.Vinayagamurthy and he has been authorised to file the complaint.

7. Mr.P.Palaninathan, learned counsel appearing for the respondent relied on the decision in A.C.Narayan Vs. State of Maharashtra and Anr reported in AIR 2014 SUPREME COURT 630 in which it is held as follows:-

> 23. In the light of the discussion, we are of the view that the power of attorney holder may be allowed to file, appear and depose for the purpose of issue of process for the offence punishable under Section 138 of the N.I. Act. An exception to the above is when the power of attorney holder of the complainant does not have a personal knowledge abot the transactions then he cannot be examined. However, where the attorney holder of the complainant is in charge of the business of the complainant-payee and the attorney holder alone is personally aware of the transactions, there is no reason why the attorney holder cannot depose as a witness. Nevertheless, an explicit assertion as to the knowledge of the Power of Attorney holder about the transaction in question must be specified in the complaint. On this count, the fourth question becomes infructuous.

8. In the light of the above, I do not find any infirmity in the complaint filed by the respondent/complainant. The contention of the petitioner that the respondent/complainant has not made any averments in the complaint to show that petitioners are vicariously liable under Section 141 of Negotiable Instruments Act.

9. A perusal of the complaint shows that the respondent/complainant has clearly averred that accused Nos.3 and 4 are the trustees in the first accused accused trustee and they are in charge of the day to day affairs of the first accused trust.

10. When there are positive averments to the effect that the petitioners are responsible for the day to day affairs of the trustee, it can not be stated that the complaint is bereft of particulars as envisaged under Section 141 of Negotiable Instruments Act.

11. In the facts and circumstances of the present case, I do not find any reason to quash the proceedings in S.T.C.No.208 of 2012 on the file of Fast Track Court II, Erode. Accordingly, the petitions are dismissed.

12. Since the S.T.C.No.208 of 2012 is pending for more than six years, the learned Fast Track Court II, Erode is directed to dispose of the case within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Judge,
The Fast Track Court II, Erode.

2. The Public Prosecutor,
Madras High Court, Madras.

+2cc to Mr.P.Palaninathan, Advocate Sr.40775, 40776

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rj[co]
srg 27/07/2018