

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 08.03.2018]

[Pronounced on : 22.06.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.O.P.Nos.7764 and 7765 of 2011

and

Crl.M.P.Nos.1, 1, 2 and 2 of 2011

Mr.D.Jeyapal

Trustee

Archana Educational and Charitable Trust

Salem Main Road - Thimmapuram

Krishnagiri District.

... Petitioner in

Crl.O.P.No.7764/2011/Accused No.3

D.Anuradha

Archana Educational and Charitable Trust

Salem Main Road - Thimmapuram

Krishnagiri District.

... Petitioner in

Crl.O.P.No.7765/2011/Accused No.4

... Vs ...

Mukesh Infoserve Pvt. Ltd.,

Rep. by its Director

S.Senthil Kumar

Having office at No.4

Venkat Rathnam Nagar Extension

First Street, Adyar, Chennai - 600 020.

... Respondent in

both Crl.O.Ps./Complainant

Prayer in both Crl.O.Ps.: Criminal Original Petitions filed under Section 482 of Cr.P.C. to call for the records in C.C.No.7675 of 2010 on the file of the XVII Metropolitan Magistrate Court, Saidapet, Chennai and quash the same as against the petitioner.

In both Crl.O.Ps.

For Petitioners : Mr.T.T.Ravichandran

For Respondent : Mr.D.Ferdinand

for M/s.BFS Legal

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COMMON ORDER

Both the criminal original petitions are filed by the petitioners under Section 482 of Cr.P.C. seeking to quash the complaint in C.C.No.7675 of 2010 filed by the respondent herein under Sections 138 and 141 of the Negotiable Instruments Act before the learned XVII Metropolitan Magistrate, Saidapet, Chennai.

2. The complainant in C.C.No.7675 of 2010 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai, is in the business of providing computer solutions along with various gamut of peripheral solutions. M/s. Archana Educational and Charitable Trust had approached the complainant for supply of 200 numbers of Dell Vostro (TM) 1014 N series note books to its institution. Laptops were bought on credit. Seven post-dated cheques amounting to a sum of Rs.57,20,000/- against the invoice raised by the complainant bearing No.CHN-INV 102893, 2009-2010, dated 29.12.2009 were issued. The cheques were dishonoured as per the Bankers advice dated 20.03.2010. Thereafter, the complainant issued a statutory notice dated 20.03.2010 and the same was returned on 13.04.2010 with an endorsement 'unserved'. Since the cheques have been dishonoured, the complainant has preferred the present complaint before the learned XVII Metropolitan Magistrate, Saidapet, Chennai.

3. Learned counsel appearing for the petitioners would contend that the third accused is the petitioner in CrI.O.P.No.7764 of 2011 while the fourth accused is the petitioner in CrI.O.P.No.7765 of 2011. The petitioners in both the cases, who are arrayed as third and fourth accused respectively, are Trustees of Archana Educational and Charitable Trust, Salem, Krishnagiri District.

4. The main contention of the learned counsel appearing for the petitioners in both the petitions is that the petitioners are not signatories to the cheques and the cheques were not issued from the petitioner's account and the petitioners are only Trustees in the Archana Educational and Charitable Trust on whose behalf the cheques have been issued to the respondent herein, who is the complainant before the trial Court and hence, as the petitioners are not signatories to the cheques, neither the cheques were issued from the petitioner's account nor the petitioners were anyway responsible for placing purchase orders on behalf of the Educational Trust. It is further contended that there is no legally recoverable debt by the complainant from the petitioners and there is no privity of contract between the petitioners and the complainant and hence, seeks for quashment of the case in C.C.No.7675 of 2010.

5. Per contra, the learned counsel appearing for the respondent would contend that for the supply of Computers, the first accused before the trial Court issued the cheques while accused Nos.2 to 4 are the Trustees, who are managing the day-to-day activities of the Trust and hence, all are liable, since the cheques have been bounced for insufficient funds and after statutory notice, the complaint has been lodged before the jurisdictional Magistrate.

6. The question as to whether the Trust is liable for prosecution for the offence under Section 138 r/w. 141 of the Negotiable Instruments Act is no longer res integra in view of the decision of this Court reported in 2012 (5) CTC 203 [Abraham Memorial Educational Trust Vs. C.Suresh Babu, wherein, at paragraph No.67, this Court has held as follows:-

"67. My conclusions are summed up as follows:-

(i) A Trust, either private or public/charitable or otherwise, is a juristic person who is liable for punishment for the offence punishable under Section 138 of the Negotiable Instruments Act.

(ii) A Trust, either private or public/charitable or otherwise, having either a single trustee or two or more trustees, is a Company in terms of Section 141 of the Negotiable Instruments Act.

(iii) For the offence under Section 138 of the Negotiable Instruments Act, committed by the Trust, every trustee, who was in-charge of the day-to-day affairs of the Trust shall also be liable for punishment besides the Trust."

7. After going through the complaint filed before the trial Court, it is seen that accused Nos.2 to 4 are actually involved in the day-to-day affairs of the Trust and I find requisite statements that are required to be in the complainant petition so as to make the accused vicariously liable for the offence committed by the Trust. Thus, I find that the other grounds raised by the petitioners herein are matter for evidence which cannot be gone into in the quashment petitions and in view of the settled proposition of law as extracted above and necessary averments find in the complaint, I am not inclined to quash the complaint.

8. Accordingly, this Court finds that taking cognizance of the Magistrate is proper and the same cannot be questioned and the same is hereby confirmed and the petitions are devoid of merits and hence, both Criminal Original Petitions are dismissed with a direction to the learned XVII Metropolitan Magistrate, Saidapet, Chennai, to dispose of the case in C.C.No.7675 of 2010, within a period of twelve weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Jrl

To

The XVII Metropolitan Magistrate,
Saidapet, Chennai.

+1cc to M/s.BFS Legal, Advocate sr.no.40021

Order in
Crl.O.P.Nos.7764 & 7765 of 2011

ssi(co)
nr 09/07/2018

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