IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.06.2018

DELIVERED ON: 18.06.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.29022 of 2013
and
Crl.M.P.No.1 of 2013

1. M/s Kinfotech Private Limited
represented by its Managing Director,
Mr.Prabhakar Kini, Brigade Corner, Yediyur Circle,
Kanakapura Road, 7th Block, Jayanagar,
Bangalore 560 082.

also at
No.2/10, Ajay Plaza, 3rd Floor, 1st Main Road,
N.S.Palya, Banerghatta Road,
Bangalore 560 076.

2. Prabhakar Kini,
Managing Director, M/s Kinfotech Private Limited,
Brigade Corner, Yediyur Circle,
Kanakapura Road, 7th Block, Jayanagar,
Bangalore 560 082.

also at
No.2/10, Ajay Plaza, 3rd Floor, 1st Main Road,
N.S.Palya, Banerghatta Road,
Bangalore 560 076.

3. Ravi Kumar Dorai Swamy,
Additional Director, M/s Kinfotech Private Limited,
Brigade Corner, Yediyur Circle,
Kanakapura Road, 7th Block, Jayanagar,
Bangalore 560 082.

also at
No.2/10, Ajay Plaza, 3rd Floor, 1st Main Road,
N.S.Palya, Banerghatta Road,
Bangalore 560 076. ... Petitioners

//vs//

M/s Redington (India) Ltd,
Rep. by Mr.M.Sundararajan,
Senior Legal Executive,
SPL Guindy House, 95, Mount Road,
Guindy 600 032. ... Respondent

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.1530 of 2013 filed by the respondent/complainant, pending on the file of III Fast Track Metropolitan Magistrate Court, Saidapet, Chennai (transferred from IX Metropolitan Magistrate Court, Saidapet, Chennai) and quash the same.

For Petitioners : Mr.Lakshmi Narasimhan

For Respondent : Mr.V.T.Narendran

ORDER

The petitioners are accused in C.C.No.1530 of 2013 on the file of III Fast Track Court, Metropolitan Magistrate Court, Saidapet, Chennai.

2. The respondent/complainant filed a private complaint under Section 200 of the Code of Criminal Procedure against the petitioners in C.C.No.1530 of 2013 before the IX Metropolitan Magistrate, Saidapet, Chennai for an alleged offence punishable under Section 138 of Negotiable Instruments Act. Subsequently, the case was transferred to III Fast Track Metropolitan Magistrate Court, Saidapet, Chennai. The case of the respondent/complainant in C.C.No.1530 of 2013 is that he is engaged in the business of distribution of computers and computer peripherals and related products of various multinational companies and the first accused having its office at No.2/10, Ajay Plaza, 3rd Floor, 1st Main Road, N.S.Palya, Banerghatta Road, Bangalore 560 076, through its Managing Director Mr.Prabhakar Kini and Additional Director Mr.Ravi Kumar Dorai Swamy, who are 2nd and 3rd petitioners respectively, placed orders for purchase of Autodesk Software Products, Adobe Software products, Apple products, Iron Port Software License products, Mcfee Software License products, Microsoft Software License products, Micro Focus Software products, Quest Software License products, NetApp Storage products and Symaniec Software License products etc. and the goods were delivered to the accused as per the invoice as mentioned in the complaint. According to the complainant, the 2nd and 3rd accused signed the cheques on behalf of the first accused in favour of the complainant. The details of the cheques are mentioned below.

Sl No	Cheque No.	Date	Amount Rs.	Signed by
1	815960, drawn on Corporation Bank, Jeyanagar Branch (0074), Bangalore 560 011	28.01.2012	35,52,054/-	III petitioner
2	815961, drawn on Corporation Bank, Jeyanagar Branch (0074), Bangalore 560 011	28.01.2012	13,13,216/-	III Petitioner
3	956985, drawn on Corporation Bank, Jeyanagar Branch (0074), Bangalore 560 011	27.01.2012	27,82,441/-	II Petitioner

When the cheques were presented for encashment on 08.06.2012 by the complainant through his bankers viz., HDFC Bank Limited, CMS Operation, 2nd Floor, 115, Radhakrishnan Salai, (Opp) CSI Kalyani Hospital, Mylapore, Chennai 600 004, the same were returned for the reason "Account Closed". Therefore, the complainant issued a notice dated 28.06.2012 to the petitioners/accused and the same was received by the 2nd and 3rd accused, who are the Managing Director and Additional Director respectively of the first accused company on 30.06.2012. According to the complainant, the 2nd and 3rd accused as directors of the first accused company, are responsible for the day today affairs of the company and also they had active involvement in all the transactions between the complainant and the accused.

3. Mr.Lakshmi Narasimhan, learned counsel appearing for the petitioners contended that the entire proceedings in C.C.No.1530 of 2013 on the file of III Fast Track Metropolitan Magistrate, Saidapet, Chennai is liable to be quashed under Section 482 of Code of Criminal Procedure on the following grounds.

[i] The 2nd petitioner resigned his post as Managing Director of the first petitioner company with effect from 31.03.2012 and since the cheques were presented only on 08.06.2012, the 2nd petitioner cannot be held liable for the offence punishable under Section 138 of Negotiable Instruments Act.

[ii] Since the first petitioner is having its

office at Bangalore and the 2nd and 3rd petitioners are also residing in Bangalore, the learned Judicial Magistrate, who took cognizance of the offence should have conducted an enquiry under Section 202 of the Code of Criminal Procedure, before issuing process, which has not been done in the instant case.

[iii] The respondent/complainant has not specifically averred in his complaint as to the role played by the 2nd and 3rd accused in the first accused company and in the absence of specific averment, as contemplated under Section 141 of the Negotiable Instruments Act, the 2nd and 3rd accused cannot be prosecuted under Section 138 of Negotiable Instruments Act.

[iv] The account maintained by the first petitioner was actually frozen on 01.06.2012 by the Department of Commercial Tax, Government of Karnataka, for non payment of commercial tax and the Corporation Bank, Jeyanagar Branch (0074), Bangalore (Accused bank) has returned the cheques for the reason "account closed" on 11.06.2012. Since the reasons has not been properly mentioned in the cheque return memo, the entire complaint pending before the III Fast Track Metropolitan Magistrate, Saidapet, Chennai is liable to be quashed.

4. At the outset, it may be observed that the 2nd petitioner issued the cheques on 27.01.2018 i.e. 2 months prior to the date of his resignation from the post of Managing Director. The learned counsel appearing for the petitioners would contend that since the cheques were presented only after his resignation, the 2nd petitioner cannot be held liable for an offence punishable under Section 138 of the Negotiable Instruments Act. His specific contention is that the " offence " under Section 138 of Negotiable Instruments Act is committed only when the cheques are presented and dishonoured. He relied on the decisions in

[i] S.M.S.Pharmaceuticals Limited v. Neeta Bhalla and another in (2007) 4 Supreme Court Cases 70

[ii] N.K.Wahi v. Shekhar Singh and others in (2007) 9 Supreme Court Cases 481.

In none of the above decisions cited by the learned counsel appearing for the petitioner, it is held that the date of commission of the offence is the date of presentation of the cheques. Infact, in Laxmi Dyechem v. State of Gujarat in (2012) 13 Supreme Court Cases 375 it has been held thus:-

> 19. On behalf of the signatories of the dishonoured cheques it was argued that the dishonour had taken

place after they had resigned from their positions and that the failure of the Company to honour the commitment implicit in the cheques cannot be construed as an act of dishonesty on the part of the signatories of the cheques. We do not think so. Just because the authorised signatories of the cheques have taken a different line of defence that the one taken by the Company does not in our view justify quashing of the proceedings against them. The decisions of this court in National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal and S.M.S.Pharmaceuticals Ltd. v. Neeta Bhalla render the authorised signatory liable to be prosecuted along with the company. In National Small Industries Corpn. Ltd. case, this Court observed (SCC P.338 para21)

"21. ... 19. ... (c) The answer to Question (c) has to be in the affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is sc holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141. (Neeta Bhalla case, SCC p.103 para 19)

Therefore, the first ground fails.

5. Another contention of the learned counsel appearing for the petitioner is that since the petitioners/accused are residing in Bangalore, the Magistrate, before issuing summons, should have conducted an enquiry under Section 202 of the Code of Criminal Procedure. Reliance was placed on the decisions in

[i] National Small Industries Corporation Limited v. Harmeet Singh Paintal and another in (2010) 3 Supreme Court Cases 330.

[ii] GHCL Employees Stock Option Trus v. Kranti Sinha in Supreme Court Cases (2013) 4 SCC 505.

He would also contend that in order to curb the practice of filing false complaints against the persons who are residing at far off places, Section 202 of the Code of Criminal procedure was amended and it makes obligatory on the part of the Magistrate, to enquire into the case himself or order investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there are sufficient grounds for proceeding against the accused.

6. Section 202 of Code of Criminal Procedure envisages that the Magistrate should postpone the issue of summons against the accused, if the accused is residing at a place beyond the area, in which the Magistrate exercises his jurisdiction. In this case, the Magistrate is exercising his jurisdiction in Chennai District and the petitioners/accused admittedly are residing in Karnataka State. In the judgments relied upon by the learned counsel appearing for the petitioners, it has been held that an enquiry under Section 202 of Code of Criminal Procedure is necessary before issuing process. It is pertinent to point out that the above decisions are related to the offences committed under the Indian Penal Code. No doubt, it is true that the procedure for trial of a private complaint for the offences under the Indian Penal Code cannot be different from a trial under Section 138 of the Negotiable Instruments Act. The amendment of Section 202 of Criminal Procedure Code was made by the Central Act 25 of 2005, in order to curb the practice of private complaints being filed by unscrupulous person against persons residing in far off places. In a case under Section 138 of Negotiable Instruments Act, petitioners/accused and the complainant would be knowing each other and there should have been some transactions between them. In the instant case, the petitioners/accused had purchased computers and other accessories from the respondent/complainant and they are not stranger to the complainant. It is relevant to note that under the amended provision of Negotiable Instruments Act, the complaint under Section 138 of Negotiable Instruments Act can be filed within the jurisdiction of the court, where the banker of the complainant is situate. In this case, the bank of the complainant is in Chennai and therefore, the complaint was filed within the jurisdictional court. Apart from this, the complainant has also issued a notice and the petitioners/accused had received the same. Therefore, the petitioners/accused cannot now contend that they had not anticipated the prosecution and were surprised on receiving the summons from the Magistrate. In such circumstances, the proceedings in C.C.No.1530 of 2013 on the file of the Metropolitan Magistrate, III Fast Track Court, Saidapet, Chennai cannot be quashed on this ground.

7. It is the contention of the learned counsel appearing for the petitioners/accused is that the complainant/respondent has not mentioned in his complaint about the role played by the petitioners/2nd and 3rd accused in the company/first accused. It is to be pointed out that the

impugned cheques were issued by the 2nd and 3rd accused and it is also stated that the 2nd and 3rd accused were actually involved in the day today affairs of the management of the first accused company. A perusal of the complaint clearly makes out a prima facie case against the 2nd and 3rd accused and therefore, this ground also fails.

8. Yet another contention of the learned counsel appearing for the petitioners/2nd & 3rd accused is that though the account of the company/first accused was frozen on 01.06.2013 by the Department of Commercial Tax, Government of Karnataka for non payment of commercial tax, the cheque return memo states the reason for return as "account closed" . It is true that the account of the company/first accused was frozen by the Government of Karnataka on 01.06.2012 for non payment of commercial tax. The respondent/complainant had presented the cheques within 6 months from the date of issuance of the cheques and the petitioners have not intimated the respondent / complainant about the factum of freezing of their account by the Government of Karnataka. In fact, the petitioners/2nd and 3rd accused have received the notice from the respondent/complainant on 30.06.2012 and even after receipt of the said notice, they did not bother to send any reply to the respondent/complainant. Therefore, in the facts and circumstances of the present case, the contentions of the learned counsel appearing for the petitioners cannot be accepted and I do not find any reason to allow this petition.

9. Since the case is of the year 2013, the learned Metropolitan Magistrate, III Fast Track Court, Saidapet, Chennai is directed to dispose off the matter within a period of 3 months from the date of receipt of a copy this order. At this juncture, the learned counsel appearing for the petitioners would contend that since the 2nd petitioner is a senior citizen aged 81 years, his personal appearance before the trial court should be dispensed with. Considering his request, the personal appearance of the 2nd petitioner is dispensed with. However, he should appear before the concerned court, whenever his presence is required.

10. With the above observations, this Criminal Original Petition is dismissed. Consequently, connected criminal miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

mst

To

1.The Metropolitan Magistrate,
  III Fast Track Court,
  Saidapet, Chennai.

2.IX Metropolitan Magistrate,
  Chennai.

+1cc to Mr.V.T.Narendhran, Advocate SR.No.37790

Cr.O.P.No.29022 of 2013

BS(CO)
GN(09/07/2018)