BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.09.2018

Pronounced on : 07.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD).Nos.1354 of 2014
and
M.P(MD).No.1 of 2014

1.K.V.Sridhar
2.K.Marudambal ..Petitioners

Vs.

N.Krishnasamy ..Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to C.C.No.49 of 2010 on the file of the Judicial Magistrate No.1, Dindigul and quash the same.

For Petitioners : Mr.A.Jayaramachandran

For Respondent : Mr.D.Selvaraj

O R D E R

This quash petition is filed to quash the criminal proceedings in C.C.No.49 of 2010 on the file of the Judicial Magistrate No.1, Dindigul filed for the offence under Section 138 of Negotiable Instrument Act.

2.The case of the respondent/complainant is that the complainant is a private limited company. On behalf of the company to file civil and criminal cases delegated the powers to its Managing Director Mr.Krishnasamy. To that extent, the company also passed a Board resolution. In turn, the Managing Director delegates his powers to the Accounts Manager by the power of attorney to lodge a complaint on behalf of the complainant company. The complainant's company supplied cotton yarn to the accused M/s.S.S.Agency on credit basis. From time to time, the accused Agency used to settle the amount through cheques. While being so, from 03.04.2009 to 15.09.2009, the complainant company supplied cotton yarn to the tune of Rs.6,44,000/- from the first unit of the complainant company and for a sum of Rs.1,28,880/- from the second unit of the complainant company. IN this regard, towards repayment of the same, on 16.09.2009, the first accused issued cheque bearing No.270817 dated 21.10.2009 for a sum of Rs.7,73,280/- in favour of the complainant company. This cheque has been issued by the first accused on behalf of M/s.S.S.Agency as a partner. The second accused is also one of the partner of M/s.S.S.Agency and he knows very well about the issuance of cheque and both the partners are very much looking after the day-to-day affairs of the S.S.Agency. The said cheque was presented on 22.10.2009 and the same was returned dishonoured for the reason 'insufficient funds' on 26.10.2009. Thereafter, the complainant caused statutory notice to the accused dated 24.11.2009. It was duly received by the first accused on 30.11.2009 and the notice was refused by the second accused and returned the same on 26.11.2009. After receipt of the said notice, on 02.12.2009, A1 issued reply notice stating that he was not the partner of M/s.S.S.Agency and he did not purchase any cotton yarn on credit basis and he did not issue any cheque in favour of the complainant company and the said cheque is also not belong to him and he is not the signatory to the said cheque. Therefore, the complainant company filed the complaint for the offence under Section 138 of the Negotiable Instrument Act as against both the accused. The same has been taken cognizance by the learned Judicial Magistrate No.1, Dindigul in C.C.No.49 of 2010. As against which, the present quash petition filed by both the accused.

3.The learned counsel appearing for the petitioners/accused raised the following grounds for quashing the complaint.

(i)the petitioners had executed a release deed dated 01.04.2008, whereby they retired from the partnership from S.S.Agency and relinquished all their rights and liabilities in the firm in favour of their co-partner one Mr.S.Kalidass with effect from 31.03.2008. Therefore, the alleged date of purchase of cotton yarn on credit basis on behalf of S.S.Agency, the petitioners were not partners and they have noway connected with the said purchase. Further, they did not issue any cheque on behalf of the partnership firm in favour of the complainant. When the alleged cheque was issued on behalf of the partnership firm, the complainant ought to have impleaded the partnership firm as an accused. Here, the partnership firm was not added as an accused and impleaded the partners alone as an accused in the present complaint. Further, the alleged cheque was not signed and not issued by the accused in favour of the complainant and therefore, they are not liable to be prosecuted for the offence under Section 138 of the Negotiable Instrument Act.

(ii)The complainant's company, by its Board resolution delegates its power to its Managing Director Mr.Krishnasamy to initiate criminal and civil cases on behalf of the complainant's company. In turn, the said Mr.Krishnasamy sub-delegated his power to its Accounts Manager through general power deed. Admittedly, there is a Board resolution to the effect that the complainant company delegates powers only to the said Mr.Krishnasamy. In turn, he cannot sub-delegated his power on behalf of the company to file criminal or civil cases. Therefore, the present complainant has no competence to maintain the complaint for the offence under Section 138 of the Negotiable Instrument Act.

(iii)The complainant company knows very well that the accused are already released by their retirement deed by submission of Form No.V under the Indian Partnership Act, 1932 and hence, they have noway connected with the said S.S.Agency. Even then, they have been shown as partners of S.S.Agency in the complaint that too without adding the partnership firm as an accused. Further, the accused inducted one Mr.Kalidass as a partner of S.S.Agency by their submission of Form V before the Registrar of Partnership Firm. The complainant company did not add the said Mr.Kalidass as a accused and it is fatal to the case of the complainant.

Therefore, he sought for quashment of the entire criminal proceedings in C.C.No.49 of 2010 on the file of the learned Judicial Magistrate No.1, Dindigul.

4.Per contra, the learned counsel appearing for the respondent/complainant submitted that on Right to Information Act, by the Commercial Tax Department, the complainant was furnished with information that the accused are very much acted as partners of S.S.Agency Partnership Firm and till date, they are continuing as partners and they are very much actively participated in the day-to-day affairs of the partnership firm and as such, they are liable to be punished Even in the invoice produced by the complainant, while supplying cotton yarn to the accused partnership firm, only on receipt of cheque bearing No.270817 drawn on Indian Overseas Bank from the accused herein, they supplied the goods. Therefore, they are well aware of the supply of the goods and they only issued the cheque and as such, they are liable to be prosecuted.

5.He further submitted that the first accused signed and issued the cheque specified in the complaint on behalf of the partnership firm. Therefore the attitude of the accused would go to establish the fact that the cheque was issued with an intention to cheat the complainant knowing fully well that the cheque would not be honoured since he is not the partner of the partnership firm at the time of issuance of cheque, which is not only punishable under the provision of Negotiable Instrument Act, but also punishable under Sections 406, 417 and 420 of I.P.C. Further, he would submit that the accused are incharge of day-to-day affairs of the partnership firm and they actually involved in conduct of the business of the partnership firm when the offences were committed and as such, they are liable to be prosecuted.

6.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the materials placed before this Court.

7.On perusal of the complaint, it has been filed by one S.Palanivel, S/o.S.P.Subbiah Pillai, power of attorney of one Mr.N.Krishnasamy, S/o.Nallamuthu Gounder representing the complany viz., Sri Saravana Spinning Mills Private Limited, Dindigul. The first document annexed along with the complaint viz., the Board resolution shows that the Board of Directors passed resolution thereby delegates its power to its Managing Director Mr.N.Krishnasamy, to file criminal and civil cases on behalf of the complainant company. The other documents annexed with the complaint is that his power of attorney, in which, the said N.Krishnasamy, Managing Director of the complainant company sub delegated his power to Mr.Palanivel, Accounts Manager of the company to take action under criminal and civil law on behalf of the company. In this regard, the learned counsel appearing for the petitioners relied upon the unreported judgment passed by this Court in *Criminal Appeal No.1389 of 2003 vide judgment dated 24.03.2008 - M/s.J.K.Industries Ltd., Vs. Babu*, wherein, this Court has held as follows:

> "9.From the decisions referred to supra, it is made clear to the Court that a company can file a complaint under Section 138 of the Negotiable Instruments Act, by a duly appointed Power of Attorney Agent.
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> 10.The learned counsel appearing for the respondent/accused has also equally contended that the board of directors of the complainant have appointed the Regional Manager to look after its affairs and the Regional Manager has no locus standi to appoint the Assistant Area Manager viz., Rajagopal to institute the present proceeding and therefore, the complaint itself has been filed erroneously and the first appellate Court, after considering the above legal aspect, has rightly allowed the appeal and thereby set aside the conviction and sentence passed by the trial Court and therefore, the present criminal appeal deserves dismissal.
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> 11.At this juncture, it would be more useful to look into Rule 174(3) of the Memorandum and Articles of Association of the complainant and the same reads as follows;
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> > "Subject to Section 292 of the Act, the Directors from time to time, and at any time, may delegate to any person so appointed, any of the powers, authorities and discretions for the time

being vested in the Directors other than the power to make calls or to make loans to borrow moneys and may authorise the members for the time being of any such local Board, or any of them, to fill up any vacancies therein, and to act notwithstanding vacancies; and any such appointment or delegation may be made on such terms and subject to such conditions, as the Directors may think fit, and the Directors may at any time remove any person so appointed and may annul or vary any such delegation."

12.From the close reading of the said Rule the delegation powers completely vests with the Directors and they can appoint any person to perform any act. In the instant case, the Directors of the complainant have not delegated any power to the Assistant Area Manager viz., Rajagopal to institute the present proceeding. Only the Regional Manger has delegated necessary power to the said Rajagopal to institute the present proceeding.

13.At this juncture, a nice legal question arises as to whether a delegate can further delegate. The axiomatic maxim is "Delecata Protestas non protest delegari". The maxim lays down the general rule that an agent cannot delegate his powers or duties to another, in whole or in part, without the express authority of the principal or authority derived from the statute.

14.In the instant case, as noted down earlier, the Regional Manager has given necessary authorisation to the Assistant Area Manager to file the complaint. The Regional Manager is the delegate of the Board of Directors and he is nothing but a delegate and as per the maxim referred to earlier, he cannot delegate his power or duty in favour of the Assistant Area Manager.”

In the present case on hand, the power delegated to its Managing Director by its Board of resolution has been sub-delegated to the Accounts Manager of the company through the power of attorney to file complaint on behalf of the company. From the decision referred to supra, it is made clear that an agent cannot delegate his powers or duties to another, in whole or in part, without the express authority of the principal or authority derived from the Statute. It is clear that in the case on hand, the Managing Director has given powers to the Accounts Manager to file the present complaint. The Managing Director is the delegate of the Board of Directors and he is nothing but a delegate and as per the Board resolution, he cannot delegate his power or duty in favour of the Accounts Manager. Therefore, the present complaint is not legally maintainable.

8.It is also seen from the records that the petitioners have executed release deed in favour of one Mr.S.Kalidass on 01.04.2008 itself, thereby relinquished their rights and liabilities in the firm S.S.Agency from 31.03.2008. Further, they have also submitted Form V under the Indian Partnership Act, 1932 before the Registrar of Firm and registered on 28.04.2008. The certified copy of the same has also been filed in the typed set of papers. It is also seen that they have been inducted as partners on 15.07.2002 and they have been released from the partnership firm from 31.03.2008. Admittedly, the goods as per the complaint were supplied from 03.04.2009 to 14.09.2009 from the units of the compainant's company.

9.The alleged cheque was issued towards the payment of a sum of Rs.7,73,280/- on behalf of the firm S.S.Agency in favour of the complainant company on 21.10.2009. Therefore, at the time of purchasing the goods from the complainant company and also at the time of issuance of cheque, the accused were not partners of the S.S.Agency partnership firm. Further, it also reveals from the reply notice issued by the first accused that he categorically denied the issance of cheque, signature of the cheque and the cheque was also not belong to the first accused account. Therefore, from the above, it is clear that the accused were not partners of the said firm and as such, they are not liable to be prosecuted on behalf of the paretnership firm of S.S.Agency. In this regard, the learned counsel apeparing for the petitioner would rely upon the judgment of this Court reported in *(2014) 1 MLJ (Crl) 180 - S.Rajarathinavel V. Visalatchi Enterprises*, wherein, this Court has held as follows:

> "32. On coming to the instant case on hand, it is the specific case of the petitioners that when they had resigned from their office of the directorship of the first accused company long prior to the the alleged transaction and issuance of cheques, it is too much for the respondent to contend that the petitioners were not only the directors of the first accused company but they were also actually in-charge of it's day-to-day management.
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> 33. Mr.S.Subbiah, learned counsel appearing for the petitioners has also argued that when the petitioners resigned from their respective offices of the directorship of the first accused company much earlier to the dates specified in Form No.32 namely 31.10.1999, 15.10.2003, 31.12.2003 and 03.01.2007 respectively were infact ceased to hold the office, it would be a futile effort on the part of the respondent to implicate the petitioners as if they were in day-to-day management and incharge of the company.
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> 34. In the instant case on hand, as it has been

stated herein before, the documents viz., Form No.32 produced by the learned counsel appearing for the petitioners, are all public documents as contemplated under Section 74(2) of the Indian Evidence Act, 1872 and also in terms of Section 610 and 163 of the Companies Act, 1956 and therefore no doubt they are admissible in evidence and on the face of the documents, this Court is of considered view that it is beyond suspicion or doubt, placed on record by the accused and if it is considered, the accusation against the petitioners cannot stand and therefore the documents viz., Form No.32 have a bearing on the matter even at the initial stage and therefore as observed by the Apex Court in Anita Malhotra's case (cited supra), the relief, which is sought for in the petition can very well be granted by exercising the inherent jurisdiction of this Court under Section 482 Cr.P.C.,

35. As observed by R.V.RAVEENDRAN, J., on behalf of the Division Bench in K.K.Ahuja's case (cited supra), the prevailing trend appears to require the complainant to state as to how a Director who is sought to be made an accused, was in charge of the business of the Company, as every Director need not be and is not in charge of the business of the Company.

36. In the instant case on hand also, the respondent, who is the complainant in the above said cases has not stated as to how the complaints have been filed against the petitioners. In the absence of appropriate answer on the part of the respondent, this Court, without any hesitation, can exercise the inherent jurisdiction of this Court under Section 482 Cr.P.C., and quash the criminal proceedings of the case in S.T.C.Nos.1290, 1292 and 1293 of 2007, on the file of the learned Judicial Magistrate No.II, Madurai, in respect of the petitioners alone."

10.In view of the above proposition of law laid down by the Hon'ble Apex Court followed by this Court in the above decision, the relief sought for in the petitioiner can very well be maintained by exercising the inherent jurisdiction of this Court under Section 482 of Cr.P.C. Though it is not proper for this Court to consider the defence of the accused or conduct a roving enquiry in respect of merits of the accusation, but if on the face of the document which is beyond suspicion or doubt, placed on record by the accused and if it is considered that the acusation against the petitiners cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on this Court to look into those documents, which have a bearing on the matter even at the initial stage and grant relief to the persons concerned by exercising jurisdiction under Section 482 of Cr.P.C.

11.In view view of the above discussion, this criminal original petition is allowed and the criminal proceedings in C.C.No.49 of 2010 on the file of the Judicial Magistrate No.1, Dindigul is quashed. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar (Writs)

/True copy/

Sub Assistant Registrar(CS-III)

To

1.The Judicial Magistrate No.1, Dindigul
2.Do Through The Chief Judicial Magistrate, Dindigul.

Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1cc to Mr.A.Jayaramachandran, Advocate, SR.No. 82853

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and
M.P(MD).No.1 of 2014
07.09.2018

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