IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
30.06.2021	16.07.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO.4725 OF 2018

1. M/s.Nirmal Datacomm Pvt. Ltd.
   Rep. By its Managing Director
   Kedhar Ghanshyam Shah
   Prem Estate, 'C' Wing, 3rd Floor
   Sant Savta Cross Road No.1
   Mustafa Bazar, Byculla (East)
   Mumbai 400 010.

2. Kedhar Ghanshyam Shah
3. Saroj Kedhar Shah
4. Saroj Purshottam Makwana ... Petitioners

- Vs -

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

Criminal Original Petition filed u/s 482 Cr.P.C. praying this Court to call for the records on the file of the III FTC Metropolitan Magistrate, Saidapet, Chennai, in C.C. No.47 of 2016 and quash the same.

For Petitioners: Mr. N.R.Elango, SC, for
Mr. K.V.Sanjeev Kumar

For Respondent : Mr. N.T.Narendiran

ORDER

The present criminal original petition is directed against the cognizance taken of the complaint filed by the respondent u/s 138 of the Negotiable Instruments Act by the III Metropolitan Magistrate, (FTC), Saidapet, Chennai, in C.C. No.47 of 2016.

2. It is the case of the petitioner that A-1 is the company; A-2 is the Managing Director of A-1 company and A-3 and A-4 are its non-executive Directors of A-1 Company. A-1 had entered into a business transaction with the respondent company for the supply of computer and computer prefill products and in line with the said business arrangement, A-1 company had a fixed credit limit facility with the respondent company. In furtherance to the business transaction between A-1 and the respondent, three security cheques, which were non-MICR cheques (non-CTS-2010 cheques) were issued by A-1 in the year 2010. There arose certain disputes between A-1 company and the respondent, in relation to payment of some commission to A-1, which resulted in the presentment of one of the non-MICR cheques by the respondent in the year 2015, which was returned by the bank as the same was non-CTS-2010 compliant and against the same, the present complaint was filed by the respondent u/s 138 of the Negotiable Instruments Act, which has been taken cognizance of by the trial court and aggrieved by the same, the present petition has been filed for quashment of the same.

3. Mr. N.R.Elango, learned senior counsel appearing for the petitioner submitted that the trial court has wholly misdirected itself in entertaining the complaint for the very simple reason that initially on and from 31.12.2012, Reserve Bank of India had instructed all the banks to recall all the non-MICR cheques from its customers and replace the same with CTS-2010 cheques, which was subsequently extended upto 31.07.2013. That being the case, the case of the petitioner being that the cheques, three in number, were issued only towards security purpose, had been misused by the respondent, more especially, knowing fully well that the said cheques are non-CTS-2010 complaint cheques.

4. It is the further submission of the learned senior counsel for the petitioner that the Reserve Bank of India having intimated that the non-CTS-2010 cheques would not be valid after 31.3.2013, the respondent being a business entity, was also very much aware of the invalidity of the security cheques, which it was holding, but wantonly had deposited one of the cheques, knowing it to be invalid and, the cheques, being given only for security purposes, have been deposited by the respondent, without notice to the petitioner.

5. It is the further submission of the learned senior counsel for the petitioner that the respondent cannot claim ignorance of the cheque not being CTS-2010 complaint as it is also a large establishment, which would have its own Finance and Legal Department, who would be knowing the nuances of the deposit of a non-CTS 2010 cheque. It is the further submission of the learned senior counsel that only towards the commission payment between the petitioners and the respondent, there

existed a dispute, and to defeat the claim of the petitioners towards payment of commission, the respondent has resorted to depositing the cheque, which has been purely given for security purpose, which clearly shows that the respondent was trying to enrich itself by not giving the commissions due to the petitioner in the business transaction between both the entities. It is the further submission of the learned senior counsel that in respect of the dispute between A-1 and the respondent, arbitration proceedings were initiated by the respondent leading to passing of an arbitral award in favour of the respondent.

6. It is the further submission of the learned senior counsel for the petitioners that once the Reserve Bank of India has given directions to the bank for substituting the non-CTS-2010 cheques with CTS-2010 cheques and the validity has been extended only upto 31.7.13, the act of the respondent in depositing the cheque, which is invalid, after the prescribed period, would not attract the offence u/s 138 of the Negotiable Instruments Act. In this regard, learned senior counsel for the petitioners drew the attention of this Court to Section 138 of the Negotiable Instruments Act and submitted that the cheque has been returned not due to insufficiency of funds in the account, but on account of the cheque being invalid, due to the same being non-CTS-2010 compliant and, therefore, the A-1 and A-2 cannot be fastened with any criminal liability towards the dishonour of the cheque.

7. It is the further submission of the learned senior counsel that the cheque had been given as security in the year 2010 and the same has been deposited only in the year 2015 and in view of the gap of five years in the deposit of the cheque, the limitation comes into play and the cheque is not enforceable as the same is barred by limitation.

8. It is the further submission of the learned senior counsel that insofar as petitioners 3 and 4 are concerned, who are arrayed as A-3 and A-4, they are only non-executive directors of the company, who are not involved in the day-to-day affairs of the company and, therefore, implicating them in the offence is wholly unsustainable. Further, they are also not signatories to the cheque. Therefore, he prays for quashment of the case registered against the petitioners.

9. Per contra, learned counsel appearing for the respondent submitted that even according to the complaint of the respondent, the cheque was given only on 20.7.2015, which, on deposit, was returned by the bank with the noting “Refer to Drawer”. It is the submission of the learned counsel for the respondent that the petitioners cannot take shelter under the

garb of “insufficiency of funds” mandated under Section 138 of the Negotiable Instruments Act, as the said Act also visuzlises other scenarios, which has not been codified, but has been left open by the use of the word “etc.” after insufficiency of funds. The said coinage is only for the purpose of meeting out such calamities and, therefore, it is not open to the petitioners to contend that the dishonour of the cheque not being on the ground of insufficiency of funds, the same cannot be put against them u/s 138 of the Act.

10. It is the further submission of the learned counsel for the respondent that all the petitioners are jointly and severally liable to pay the amount and under the guise of being non-executive directors, petitioners 3 and 4 cannot claim immunity as there is no material whatsoever to arrive at a conclusion that petitioners 3 and 4 are non-executive directors of A-1 company.

11. It is the further submission of the learned counsel for the petitioner that the validity or otherwise of the cheque on the ground of it being non-CTS-2010 or CTS-2010 compliant cannot be gone into in a petition u/s 482 Cr.P.C. and it is a matter to be decided at the time of trial and quashing the proceedings at this stage would be nothing but putting the cart before the horse by foreclosing the avenue open to the respondents. Accordingly, he prays for dismissal of the present petition.

12. This Court paid its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials to which this Court's attention was drawn.

13. Before adverting to the issue relating to the cheque and its return by the bank, it is to be pointed out that A-1 to A-4, viz., the petitioners 1 to 4 have been implicated in the offence. It is the specific stand of petitioners 3 and 4 that they are mere non-executive directors and they are not involved in the day-to-day affairs of the 1st petitioner company and the 2nd petitioner alone was in-charge of all the affairs of the 1st petitioner company and, therefore, fastening them with criminal liability cannot be sustained. Even the petition reveals that petitioners 3 and 4 have been shown only as Directors of the 1st petitioner company. Except for an averment by the respondent in the complaint that petitioners 3 and 4 are also jointly and severally liable to be proceeded with, with regard to the dishonour of the cheque, however, no tangible material has been placed by the respondent to show that petitioners 3 and 4 were also actively involved in the day-to-day affairs of the company and were also involved in all the business affairs between the 1st petitioner company and the respondent. There is no whisper

in the complaint as to the said aspect. There is also no other material in the form of any documents, which has emanated from petitioners 3 to 4 to the respondent, to show that petitioners 3 and 4 were working directors and were involved in the regular working of the 1st petitioner company. Petitioners 3 and 4 being mere Directors of the company, but not involved actively in the day-to-day affairs of the company, cannot be implicated to the mere fancies of the respondent. In absence of any material to substantiate the same, the stand of the respondent in the complaint that petitioners 3 and 4 are also liable to be proceeded with does not stand to reason and the said contention deserves to be rejected.

14. On the question of limitation, it is to be pointed out that even according to the respondent, as per the complaint, the cheque has been issued only on 20.7.2015 relating to the dues from the 1st petitioner company and it was deposited. Though it is the case of the petitioners that the cheque was issued in the year 2010 as security and it has been presented in the year 2015 and, therefore, it is barred by limitation, however, this Court go into the merits of the said contention as the same being a question of fact and being a triable issue, which has to be proved on the basis of oral and documentary evidence, this Court is not inclined to venture into the said contention in the present petition u/s 482 Cr.P.C. Therefore, the question of limitation raised by the petitioners, on the face of it, cannot be sustained for the simple reason that it is the case of the respondent that the cheque was issued only on 20.7.15, whereinafter it was deposited.

15. The pivotal contention raised by the learned senior counsel for the petitioners hinges upon the validity of the cheque, which cheque, according to the learned senior counsel is an invalid cheque and does not fall within the four corners of Section 138 of the Negotiable Instruments Act.

16. Vociferous argument has been placed before this Court by the learned senior counsel to the effect that the cheque issued by the petitioners, for security purpose, in the year 2010 is a non-CTS-2010 cheque, as was in vogue at that point of time, which has lost its validity on and after 31.7.2013 in view of the circular issued by the Reserve Bank of India dated 18.3.2013 and the cheque being an invalid cheque, the same would not attract the provision u/s 138 of the Negotiable Instruments Act. It is the further submission of the learned senior counsel that the cheque having not been returned due to insufficiency of funds in the account of the petitioner, the same would not amount to dishonour as provided for u/s 138 of the Negotiable Instruments Act.

17. In this regard, it is to be pointed out that the circular issued by Reserve Bank of India dated 18.3.13, which has been pressed into service to put forth the contention that the non-CTS-2010 cheque is an invalid cheque, however, clause (c) of the circular issued by Reserve Bank of India provides that all residual non-CTS-2010 cheques with customers will continue to be valid and accepted in clearing houses (including the Cheque Truncation System (CTS) Centres) for another four months up to July 31, 2013, subject to a review in June, 2013. From the said clause it is evident that validity is given till 31.7.2013, which is subject to review. However, no material is placed on record to show the actual decision taken by the Reserve Bank of India as to the validity of the cheques, which are non-CTS-2010 complaint. That being the case, the petitioners are bound to establish the validity or otherwise of the cheque by adducing oral and documentary evidence during trial and at this point of time, it would not be prudent for this Court to render one finding or the other as to the validity of the cheque, in the absence of any substantial material voicing any particular view with regard to the same.

18. Further, it is to be pointed out that the cheque, which finds place in the typed set of documents along with the return report of the bank, in no way shows as to whether the said cheque is a non-CTS-2010 cheque or a CTS-2010 cheque. The return report of the bank merely states the reason for return as "Refer to Drawer". The purpose for which the cheque has been returned has not been spoken to by the bank in unequivocal terms in the return report. Further, there is no distinguishing feature pointed out to show the difference between the two types of cheques. In this backdrop, the circular of the Reserve Bank of India shows that the banking channels, based on the digital signature in the form of Magnetic Ink Character Recognition (MICR), would be in a position to distinguish a non-CTS-2010 cheque from a CTS-2010 cheque. The Court, appreciating an issue u/s 482 of the Code of Criminal Procedure, would not be justified in giving a decision one way or the other as to the nature of the cheque, which is put in issue by the parties as the same has to be established only at the time of trial by adducing oral and documentary evidence.

19. Further, in the present petition u/s 482 Cr.P.C., no material with regard to the cheque being given as security or the business arrangement between the petitioners and the respondent is placed. It is also to be pointed out that arbitration proceedings were initiated by the respondent which has culminated in the passing of an award in favour of the respondent. In the above backdrop, it is to be pointed out that the validity of the cheque, one way or the other, has to be decided only at the time of trial through necessary evidence and

foreclosing the respondent from trying to establish his case would only prejudice his rights in contesting the matter, in which, according to him, he is the gross loser.

20. The validity or invalidity of the non-CTS-2010 cheque is a matter for trial by placing requisite materials from the banking channels, both oral and documentary, as pointed out above, in addition to the circulars issued by the Reserve Bank of India. In fact, deciding on the nature of the cheque, being a non-CTS-2010 cheque, according to the petitioners, as pointed out above, would not be justified. Such being the case, going into the validity of the cheque, which is claimed to be a non-CTS-2010 cheque, at this point of time to hold as to whether a prima facie case has been made out by the respondent or not to continue the complaint, would be nothing but putting the cart before the horse. In the above circumstances, this Court is of the considered view that the petition at the behest of the petitioners 1 and 2 for quashing the charge sheet cannot be permitted and, accordingly, it deserves to be rejected.

21. For the reasons aforesaid, the criminal original petition is allowed in part by quashing the case insofar as petitioners 3 and 4 are concerned. However, insofar as petitioners 1 and 2 are concerned, the criminal original petition stands dismissed. In view of the fact that the case is of the year 2016, the petitioners 1 and 2 and the respondent are directed to co-operate with the trial court for the early completion of trial. Further, taking into consideration the factual matrix, the appearance of the 2nd petitioner before the trial court is dispensed with except for his appearance for the purpose of receiving the copy of the proceedings u/s 207 Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular reason, the presence of the 2nd petitioners is necessary, the trial court, at its wisdom, shall direct his appearance on those days.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

GLN
To

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

2.-Do- Thro The Chief Metropolitan Magistrate,
Chennai.

+1cc to Mr.K.V.Sajeev Kumar, Advocate Sr.33865
+1cc to Mr.V.T.Narendiran, Advocate Sr.34132

CRL. O.P. NO. 4725 OF 2018

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srg 13/08/2021