BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 05.08.2022

CORAM

The Hon`ble Mr.Justice G.ILANGOVAN

CRL OP(MD). Nos.9593 to 9596 of 2019
and
Crl.M.P.(MD) Nos.6084 to 6091 of 2019

N.Padmanabhan

... Petitioner in all Crl.O.Ps.,

Vs

M/S.Raja Holding Financier and Merchant,
represented by its Managing Partner,
R.V.Subramaniam,
S/o.Ponnusamy,
No.69, Town Higher Secondary School Road,
Kumbakonam.

... Respondent in Crl.O.P.(MD) Nos.9593 and 9596 of 2019

Kalpana

... Respondent in Crl.O.P.(MD) No.9594 of 2019

Shantha Jayaraman

... Respondent in Crl.O.P.(MD) No.9595 of 2019

COMMON PRAYER :-Criminal Original Petitions are filed under Section 482 of Cr.P.C, to call for the records in CC.Nos.62, 86, 87 of 2017 and 1 of 2018 on the file of the learned Judicial Magistrate-II, Thanjavur and learned Judicial Magistrate, Fast Track Court, Thanjavur, respectively and quash the same.

For Petitioners
in all Crl.OPs., : Mr.M.Shreedhar

For Respondent
in all Crl.O.Ps., : Mr.ARL.Sundaresan
Senior Counsel for
Mrs.AL.Ganthimathi

COMMON ORDER

All these Criminal Original Petitions have been filed to call for the records in CC.Nos.62, 86, 87 of 2017 and 1 of 2018 on the file of the learned Judicial Magistrate-II, Thanjavur and the learned Judicial Magistrate, Fast Track Court, Thanjavur, respectively and quash the same.

2.The complainants filed the private complaints. In all the cases, the accused person is one and the same, but the complainants are the different persons. The power of attorney holder for the complainants is one and the same. Since all these matters are connected and the issues involved in all the cases are one and the same, all the petitions have been heard in common and a common order is also passed.

3.The case of the prosecution in brief is as follows:-

4.The accused person in all the cases, namely, N.Padmanabhan, borrowed a sum of Rs.5.50 Crores on 27.04.2015 from the complainant company and he executed a mortgage deed. Thereafter, he issued cheques on various dates towards payment of the interest amount. All the cheques were presented for payment on 28.07.2017 in the Indian Bank, Nilgries Branch, Thanjavure. All the cheques were dishonoured due to insufficient funds. So, after sending the statutory notice, the complaint was filed, which was taken cognizance in CC.No.67 of 2017.

5.Insofar as Crl.O.P.(MD) No.9596 of 2019 is concerned, for the purpose of purchasing a land for building residential apartment, the accused person borrowed a sum of Rs.5.50 Crores from the complainant company on execution of the mortgage deed and executed the mortgage deed on 27.04.2015. So, after the aforesaid 5.50 Crores, 5.10 Crore was paid through cheque. The balance amount of Rs.40 lakhs was provided by the complainant by obtaining money from Kalpana and Shantha Jayaraman. The aforesaid amount was also given to the accused person through cheque. The amount of interest was not paid properly. So, the accused person entrusted three cheques dated 28.12.2017, 28.01.2017 and 28.02.2017 for various amounts drawn on Indian Bank, Papaanasam Branch, Thanjavur, but those cheques were dishonoured on presentation. After sending the statutory notice, the case was filed, which was also taken cognizance in CC.No.1 of 2018.

6.Insofar as Crl.O.P.(MD) No.9895 of 2019 is concerned, the facts are that out of 5.50 Crore that was borrowed by the accused person, as mentioned above, Rs.20 lakhs was paid by Shantha Jayaraman to the accused person through a bank cheque drawn on City Union Bank, T.Nagar, Chennai on 27.04.2015. So, towards the principle amount, the accused person entrusted a cheque dated 28.04.2017 drawn on Indian Bank, Papanasam Branch. That was presented for payment on 28.04.2017. That was also returned due to insufficient funds. After completing the statutory formalities, the case was filed, which was taken cognizance in STC.No.87 of 2017.

7.In Crl.O.P.(MD) No.9594 of 2019, the complainant name is Kalpana. As stated above, out of 5.50 Crore, Rs.20,00,000/- was paid by this complainant through a bank to the accused person. On 27.04.2015, towards the discharge of the aforesaid Rs.20 lakhs, the accused entrusted a cheque dated 28.04.2017 drawn on Indian Bank, Papanasam Branch and that was also presented for payment on 28.04.2017. That was also dishonoured due to insufficient funds. After completing the statutory formalities, the case was filed, which was taken cognizance in STC.No. 86 of 2017. So, seeking quashment of these criminal complaints, the present petitions have been filed.

8.Heard the learned counsel on either side.

9.As stated above, totally 5.50 Crore appears to have been borrowed by the accused persons. Out of the aforesaid 5.50 Crore, it is the case of the complainants, as stated above, that 5.10 Crore was issued from the company and insofar as Rs.40 lakhs is concerned, it was given by the aforesaid Kalpana and Shantha Jayaraman. All the cheques have been issued, according to the defacto complainants, towards discharge of the principle amount, interest etc.

10.Now, a common ground that was made in all these petitions is that the power of attorney is not a competent person to file complaints and no power of attorney was also executed by the complainants in all the cases and that was not also filed along with the complaints.

11.Another factual aspect is that numbers and dates, which are mentioned in the pleadings, are entirely different from the cheques, which were annexed in the list of documents. The cheques were misused by the complainants for high rate of interest. No proper details have been mentioned in the complaints.

12.The learned Senior Counsel for the respondent would submit that along with the complaints, the power of attorney that was executed by the respective complainants is also filed before the concerned Court.

Only after the scrutiny of the records and after recording the statement of the power of attorney holders, those cases have been registered. But in the list of documents, it is seen that the power of attorney was found missing. So, the entire records have been called for from the trial Court pointing out whether the power of attorney document was filed along with the main complaint. Copy of the records have been produced before this Court, which shows that the power of attorney document was not also produced by the complainants along with the complaint.

13.The learned counsel for the petitioner would submit that this does not satisfy the requirement of law as set out by the Hon'ble Supreme Court in number of judgments. Now, after much controversy about the competency of the power of attorney holders to file the complaints under Section 138 of Negotiable Instruments Act, 1988, now it has been more or less well settled.

14.Now, the position is that there is no bar to file a complaint by the power of attorney holder, but the only rider is that the power of attorney holder must know the facts and circumstances of the case and must also able to give evidence touching the transactions. The larger Bench of the Hon'ble Supreme Court in the case of ***A.C.Narayanan Vs. the State of Maharashtra and another with Shri.G.Kamalakar Vs. M/S.Surana Securities Ltd., and another*** reported in ***AIR 2015 Supreme Court 1198***, has held as follows:-

> "15.*While holding that there is no serious conflict between the decisions in MMTC (supra) and Janki Vashdeo Bhojwani (supra), we clarify the position and answer the questions in the following manner:*
>
> *(i) Filing of complaint petition under Section 138 of N.I Act through power of attorney is perfectly legal and competent.*
>
> *(ii) The Power of Attorney holder can depose and verify on oath before the Court in order to prove the contents of the complaint. However, the power of attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions.*
>
> *(iii) It is required by the complainant to make specific assertion as to the knowledge of the power of attorney holder in the said transaction explicitly in the complaint and the power of attorney holder who has no knowledge regarding the transactions cannot be examined as a witness in the case.*
>
> *(iv) In the light of section 145 of N.I Act, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of*

the N.I Act and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the Court, nor to examine the complainant of his witness upon oath for taking the decision whether or not to issue process on the complaint under Section 138 of the N.I. Act.

(v) The functions under the general power of attorney cannot be delegated to another person without specific clause permitting the same in the power of attorney. Nevertheless, the general power of attorney itself can be cancelled and be given to another person."

15.So, this is the settled proposition of law. Now, the question, which arises for consideration, is whether the complaints in all the matters have satisfied the requirement of law.

16.No doubt that the power of attorney documents were not produced at the time of filing of the complaint. But, according to the learned Senior Counsel for the respondent, it is a curable defect, which was also cured by producing relevant power of attorney documents.

17.Even though the learned counsel for the petitioner would submit that this document ought to have been produced along with the complaint, I am of the considered view that filing of the complaint without the aforesaid power of attorney document is nothing but an irregularity. That could be cured at any time. So, on this score, the complaints cannot be rejected.

18.The next aspect is that in all the matters, the power of attorney holder is stated to be the Accountant of the company. So, being an Accountant, he might to have known the transaction and also capable of speaking about the transaction on the basis of the personal knowledge as well as the documents. So, this also cannot be taken as a defect in the prosecution case.

19.Regarding the factual aspect, it has been contended by the learned counsel for the respondent to the effect that this is purely a factual aspect, which cannot be gone into by this Court while sitting in the jurisdiction under Section 482 of Cr.P.C., It requires proper evidence. But the consistent case of the complainant is that Rs.5.50 Crore was borrowed by the accused persons and out of Rs.5.50 Crore, 5.10 Crore was given through banking transaction. So, that cannot be denied by the petitioner at this stage. Whether there was any actual transaction and existing liability on the date of the aforesaid issuance of cheque is a matter for consideration by the trial Court, on the basis of the evidence and documents. So, the ground that has been made by this petitioner is not in existence and all the petitions are liable to be dismissed.

20.Accordingly, these Criminal Original Petitions stand **dismissed**. Consequently, connected miscellaneous petitions are closed.

(G I J)
05.08.2022

MM

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

G.ILANGOVAN,J

MM

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