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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Order reserved on :08.12.2022*

*Order pronounced on : 12.12.2022*

+ **CRL.M.C. 2547/2022 & CRL.M.A. 10630/2022**

1. Sanjay Shandilya  
s/o. Sh. Mishri Lal Shandilya  
r/o. H.No. J-68, Ground Floor,  
Ashok Vihar, Phase-I, Delhi  
M.No. 9212150206  
Email ID: sanjay\_cysystem@ yahoo.com

2. Akash Raj Gupta  
S/o. Sh. Raj Kumar Gupta  
R/o. 95/35, Kath Mandi,  
Naya Parrow, Rohtak, Haryana.  
M.No. 9873077192

..... Petitioners

Through: Mr. Sanjay Rathi and Mr. Deepak  
Khatrri, Advs.

versus

1. The State  
(Govt. of NCT of Delhi)

2. Kawaljeet Singh Duggal  
s/o. Sh. Raghubir Singh  
R/o. J-03, Dhawandeep Building,  
Jantar-Mantar Road, New Delhi-110001

3. M/s. C.P. Systems Pvt. Ltd. (Proforma respondent)  
501, Krishna Apra Building  
Netaji Subhash Palace, Pitampura,  
New Delhi-110034  
M.No. 9212150206

Email ID:sanjay\_cpsystem@yahoo.com ..... Respondents

Through: Ms.Richa Dhawan,Addl.PP for State

**CORAM:**

**HON'BLE MS. JUSTICE POONAM A. BAMBA**

**POONAM A. BAMBA, J.:**

*CRL.M.C. 2547/2022*

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**1.0** Vide this petition filed u/S. 482 of Code of Criminal Procedure, 1973 (**'Cr.PC'** in short), the petitioners have sought :-

- (i) setting aside of order dated 29.04.2022 (**'impugned order'** in short), passed by Ld. MM (N.I. Act)-01, SW/DWK/ND in C.C. No. 44350/2019 (**'complaint'** in short), titled as Kawaljeet Singh Duggal vs. C.P. Systems Pvt. Ltd. & Ors., whereby the petitioner's application under section 322 Cr.PC was dismissed; and
- (ii) dropping of the proceedings against the petitioners under section 138 of Negotiable Instruments Act (**'N.I.Act'** in short) in the aforesaid complaint.

**2.0** Briefly stating, the facts relevant for disposal of this petition are that :

- (i) Kawaljeet Singh Duggal/ respondent no. 2 herein through his Special Power of Attorney (**'SPA'** in short)/Authorized Representative Sh. Sanjeev Malik Chand filed the complaint under Section 138 N.I. Act against the respondent no. 3 i.e. M/s. C.P. Systems Pvt. Ltd. and its directors, namely, Sanjay Shandilya (petitioner no. 1 herein) and Vikas Ahuja, Akash Rai Gupta (petitioner no. 2 herein) and Suchan Jamkhandi Sunil;
- (ii) vide order of Ld. MM dated 11.12.2019, the accused persons including the petitioners herein were summoned for 13.02.2020;
- (iii) the accused no. 2 & 4/the petitioners herein filed an application u/s. 322 Cr.PC for review of summoning order dated

11.12.2019 and for dropping of the proceedings u/s. 138 N.I. Act against them;

- (iv) the said application was dismissed by the Ld. Magistrate vide order dated 29.04.2022/ the impugned order, observing that the Ld. MM does have criminal and territorial jurisdiction to proceed in the matter, rejecting the petitioner's plea of lack of jurisdiction against them.

**3.0** The petitioners have challenged the impugned order dated 29.04.2022, *inter alia*, on the grounds that:

- (i) the Special Power of Attorney holder Sh. Sanjeev Malik Chand had no authority to file the complaint u/s. 138 N.I. Act against the petitioners as the Special Power of Attorney ('SPA' in short), on the basis of which he filed the complaint on behalf of Kawaljeet Singh Duggal, did not empower him to implead the petitioners herein;
- (ii) the Ld. Magistrate failed to appreciate that as the said Special Power of Attorney only mentioned that Sh. Sanjeev Malik Chand could initiate, file, institute and do other things "in the matter of Kawaljeet Singh Duggal Vs. C.P. Systems Pvt. Ltd.", it did not authorize the SPA holder to implead the petitioners herein as accused in the aforesaid complaint; and no such proceedings could have been continued by him before the Ld. Trial Court;
- (iii) Ld. Magistrate failed to appreciate that when the SPA holder did not have authority to implead the petitioners/accused

persons and to continue such proceedings, the issuance of summons by the Ld. MM was without jurisdiction, in view of the law as laid down in *TimbloIrmaos Ltd. Margo vs. Jorge Anibal Matos Sequeria and Ors*, 1977 AIR 734.

**3.1** During arguments, with respect to scope of power of attorney, the Ld. Counsel for the petitioners also referred to the judgment in *Jimmy Jahangir Madan vs. Bolly Cariyappa Hindley (Dead) by LRs*, (2004) 12 SCC 509.

**4.0** On the other hand, Ld. counsel for the respondent no. 2 sought dismissal of this petition with heavy costs pleading that it lacks merits and has been filed only to harass the complainant and delay the proceedings before the Ld. Trial Court. It is submitted that the application under Section 322 Cr.PC filed by the petitioner was not maintainable and was rightly dismissed by the Ld. MM. Even the present petition is not maintainable.

**4.1** Ld. counsel for the respondent no. 2 also submitted that the respondent no. 3 – M/s. C.P. Systems Pvt. Ltd. is a company, a juristic person and in terms of Section 141 N.I. Act, every person, who at the time the offence was committed, was in charge of/responsible to the company for conduct of its business shall be deemed to be guilty of the offence and is liable to be prosecuted u/S. 138 N.I. Act. Thus, the SPA holder was well within his rights to proceed against M/s. C.P. Systems Pvt. Ltd. and its directors/the petitioners herein, though were not specifically named in the SPA. Thus, the Ld. MM has rightly proceeded in the matter and summoned the petitioner.

**4.2** Ld. counsel also submitted that even otherwise, the petitioners have also filed a petition for quashing of summoning order/proceedings u/s. 138 N.I. Act on 27.10.2021 on same grounds, which is pending before the co-ordinate bench of this court. This fact is not disputed by Ld. counsel for the petitioners.

**4.3** Ld. counsel for the respondent no. 2 argued that the judgment in *Jimmy Jahangir Madan's case (supra)* as relied upon by the petitioners, is not applicable in the present case, facts being very different.

**5.0** I have duly considered the submissions made by both the sides.

**6.0** It may be mentioned that the Ld. MM took cognizance and summoned the petitioners herein in the respondent no. 2's complaint u/S. 138 N.I.Act, vide order dated 11.12.2019. Pursuant thereto, the petitioners filed an application u/s. 322 Cr.PC for revisiting of the said order pleading lack of jurisdiction with the Ld. MM. The petitioners' application u/S. 322 Cr.PC was dismissed by the Ld. MM vide impugned order dated 29.04.2022, under challenge in the present petition.

**6.1** Relevant portion of the impugned order reads as under :

*"29.04.2022*

*.....*

*.....*

*Put up for notice framing against No. 2 and 4 on 31.05.2022*

*.....*

*Vide this Order, I shall dispose off the application moved by accused no.2 and 4 under Section 322 Cr.P.C. to review the Order dated 11.12.2019.*

***Counsel for accused argued that as Ex.CW1/A, SPA holder Sanjeev Mallick has been duly authorized to proceed against M/s. C.P. System Pvt. Ltd. only and not against any other person. .... He further argued that in view of directions laid down by Hon'ble Supreme Court of India in case of Expeditious Trial of case under Section 138 of N.I. Act, 1881 in Suo moto writ petition (Crl.) No. 2/2020 "The Trial Court has power to revisit the order of issue of process if brought to the Court's notice that it lacks jurisdiction to try the complaint".***

.....

***This court is of the view that there is no question of lack of jurisdiction. The court of undersigned does have Criminal and Territorial jurisdiction to proceed in the present matter. Therefore, the argument raised by accused's counsel that the present case cannot be proceeded against accused no. 2 and 4 on ground of lack of jurisdiction is not justifiable.***

***In view of the above, the present application stands dismissed."***

**7.0** Before dealing with the petitioners' contentions, reference may be made to Section 322 Cr.PC, which reads as under :

***"322. Procedure in cases which Magistrate cannot dispose of.***

***(1) If, in the course of any inquiry into an offence or a trial before a Magistrate in any district, the evidence appears to him to Warrant a presumption-***

***(a) that he has no jurisdiction to try the case or commit it for trial, or***

***(b) that the case is one which should be tried or committed for trial by some other Magistrate in the district, or***

***(c) that the case should be tried by the Chief Judicial Magistrate, he shall stay the proceedings and submit the case, with a brief report explaining its nature, to the Chief***

***Judicial Magistrate or to such other Magistrate, having jurisdiction, as the Chief Judicial Magistrate directs.***

*(2) The Magistrate to whom the case is submitted may, if so em- powered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.”*

**7.1** From the plain reading of sub clause (a) of sub section (1) of Section 322 Cr.PC, it is evident that a magistrate can not take cognizance in the matter, if he lacks jurisdiction. For bringing a case within the ambit of section 322 Cr.PC, the petitioner has to demonstrate that the Ld. Magistrate lacked jurisdiction or had defective jurisdiction, legal or territorial. It may be mentioned that vide present petition and even during arguments, Ld. counsel did not challenge the territorial jurisdiction or the legal jurisdiction of the Ld. Magistrate per se. The main contention of the petitioners is that as the SPA authorized the attorney Sanjeev Malik Chand to proceed only against the respondent no. 3 i.e. C.P. System Pvt. Ltd. and not the petitioners; thus, the Ld. Magistrate could not have proceeded against them/summoned them in the complaint u/S. 138 N.I. Act as it was filed without authority and conferred no jurisdiction on the Ld. Magistrate. Same is hardly a jurisdictional issue as contemplated u/S. 322 (1)(a) Cr.PC.

**7.2** Be that as it may. Even if it is considered for a while, perusal of the Special Power of Attorney shows that the respondent no. 2 Sh. Kanwaljeet Singh Duggal appointed Sh. Sanjeev Malik Chand as his lawful attorney to initiate, file, institute and do other such acts and to proceed/file case against the C.P. Systems Pvt. Ltd. before the District Courts, Delhi. Suffice it to state that the company C.P. Systems Pvt. Ltd. being a juristic person had to be impleaded through its directors/persons in charge responsible to the company for the conduct of its business. In

this respect, I find force in the respondent no. 2's arguments that Section 141 N. I. Act embodies the said principle and specifies that when offence u/S. 138 N.I. Act is committed by the company, the persons in charge and responsible to the company for the conduct of its business, shall be deemed to be guilty.

**7.3** Thus, the respondent no. 2/SPA holder was well within his rights to implead/prosecute the petitioners/ directors of M/s. C.P. Systems Pvt. Ltd., while filing the complaint u/S. 138 N.I. Act against the respondent no. 3 M/s. C.P. Systems Pvt. Ltd. Even if the argument of Ld. counsel for the petitioners is accepted for a moment, act of the SPA can be ratified by the complainant, even later. In view of these facts, the complaint can not be said to have been filed without authority.

**7.4** The judgment in *Jimmy Jahangir Madan's case (supra)*, as relied upon by the petitioners, is not of much assistance to them, facts being distinguishable. In that case, during trial, the complainant died leaving behind her son and daughter, who were staying in USA. The complainant's children executed a General Power of Attorney (GPA) permitting the attorney to continue the prosecution u/S. 138 N.I. Act. The GPA holder filed an application under Section 302 Cr.PC for allowing them to continue with the prosecution u/s. 138 N.I. Act. The Apex Court noted that such an application has to be filed by a person/legal heirs, who are entitled to continue the prosecution. They may in turn be represented by an attorney, in case permission for such representation is sought by them from the court and is granted.

**7.5** Even the judgment in *TimbloIrmaos Ltd. Margo's case (supra)* which deals with the scope of power of attorney, is hardly of any

assistance to the petitioners, the facts being distinguishable.

**8.0** In view of the above, the impugned order does not call for any interference.

**9.0** Petition is accordingly dismissed.

**10.0** Pending applications, if any, stand closed.

**POONAM A. BAMBA, J**

**DECEMBER 12, 2022/manju**

*Click here to check corrigendum, if any*

