



Crl.R.C.Nos.297 and 305 of 2020
and
Crl.M.P.Nos.3854 and 3855 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:25.04.2023

Pronounced on:18.05.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.Nos.297 and 305 of 2020
and
Crl.M.P.Nos.3854 and 3855 of 2020

M.C.Baby

.. Petitioner in both cases

/versus/

M/s Sastha Home Tech,
Rep.by its Partner,
Mr.S.G.Konda Reddy,
No.34, Spurtank Road,
Chetpet, Chennai 600 031.

.. Respondent in both cases

Prayer in Crl.R.C.No.297 of 2020 : Criminal Revision Case has been filed under Section 397 r/w Section 401 of Cr.P.C., praying to call for the records and set aside the order and judgment dated 24.10.2019 in C.A.No.111/2016 passed by the learned IV Additional Sessions Judge, Chennai, thereby dismissing the appeal and confirming the order and judgment dated 13.04.2016 in C.C.No.1647/2006 passed by the learned Metropolitan Magistrate, FTC No.III, Saidapet, Chennai, acquit the petitioner.



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Prayer in Crl.R.C.No.305 of 2020: Criminal Revision Case has been filed under Section 397 r/w Section 401 of Cr.P.C., praying to call for the records and set aside the order and judgment dated 24.10.2019 in C.A.No.112/2016 passed by the learned IV Additional Sessions Judge, Chennai, thereby dismissing the appeal and confirming the order and judgment dated 13.04.2016 in C.C.No.1648/2006 passed by the learned Metropolitan Magistrate, FTC No.III, Saidapet, Chennai, acquit the petitioner.

For Petitioner :Mr.R.Baskar in both cases

For Respondent :Mr.A.Nagarajan in both cases
Government Advocate(crl.side)

COMMON ORDER

These two revision petitions are preferred by the accused who was held guilty of offence under Section 138 of Negotiable Instruments Act, 1881 by the Trial Court in C.C.No:1647/2006 and C.C.No.1648/2006 (on the file of Metropolitan Magistrate, Fast Track Court No.III, Saidapet) and the same on appeal, confirmed by the Lower Appellant Court in C.A.No.111/2016 and C.A.No.112/2016 respectively (on the file of IV Additional Sessions Judge, Chennai).



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2. The point for consideration in these two cases is, whether a complaint under Section 138 of Negotiable Instruments Act, 1881 by a partner of the firm without authorisation is maintainable.

3. The parties involved in the lis is one and the same, therefore, common judgment is passed. For the sake of brevity, the revision petitioner and the respondent are referred as accused and complainant, as described in the complaints.

4. The brief facts leading to these revision petitions is summarised under:-

The complainant/respondent M/s Sastha Home Tech is a partnership firm trading with Iron and Steel bars. The accused/revision petitioner Ms.M.C.Baby, is a Railways Contractor. On various dates, the revision petitioner had placed orders for supply of materials and as per the orders, materials were delivered to the construction site of the revision petitioner by the complainant M/s Sastha Home Tech. When the complainant demanded repayment of dues, the accused to partially discharge the dues gave two cheques one bearing No:0159895,



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dated 31/12/2004 drawn on M/s Federal Bank Ltd, Thanjavur Branch, Tamilnadu, for Rs.7,41,923/- and another bearing No:390060, dated 31/03/2005 drawn on M/s Federal Bank Ltd, Puthenocruz Branch, Kerala for Rs.14,20,235/-.

5. The cheque dated 31/12/2004 for Rs.7,41,923/- was presented for collection on 24/06/2005 and same got bounced on 27/06/2005 for the reason 'insufficient of funds'. The complainant caused statutory notice on 27/07/2005 calling upon the accused to make payment of the cheque amount within 15 days. The accused received the notice on 02/08/2005. Despite receipt of the notice, the accused neither paid the cheque amount nor replied within 15 days. Hence, the private complaint filed and taken on file by the Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai, in C.C.No:1647/2006.

6. The second cheque dated 31/03/2005 for Rs.14,20,235/- was presented for collection on 04/08/2005 and same got bounced on 08/08/2005 for the reason insufficient of funds. The complainant caused statutory notice on 04/09/2005 calling upon the accused to make payment of the cheque amount



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within 15 days. The accused received the notice on 08/09/2005. Despite receipt of the notice, the accused neither paid the cheque amount nor replied within 15 days. Hence, the private complaint filed and taken on file by the Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai in C.C.No:1648/2006.

7. The complainant in both the cases had filed the subject cheque, return memo, copy of the notice, postal acknowledgement card and debit advice as prosecution side exhibits. In defence, the accused, in C.C.No.1647/2006, alone had marked the invoice dated 30/11/2004.

8. The accused contested the case on the premise that the cheques were issued as security for the goods supplied. Though payment made, the cheques are presented and misused by the complainant. The statutory notice not served on her. There is no proof that Mr.S.G.Konda Reddy, who has preferred the complaint as the partner and representative of M/s Sastha Home Tech is authorised to file the complaint. Hence, the complaints are not maintainable.

9. Both the Courts below negative the defence. Drawing presumption



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under Section 139 of Negotiable Instruments Act, 1881, the Courts held that the signature in the cheque not disputed. The business relationship is admitted. There is no rebuttal evidence let in by the accused to shift the burden of presumption. The complaint by S.G.Konda Reddy, as partner of M/s Sastha Home Tech, is maintainable.

10. Regarding the plea of maintainability of the complaint by Mr.S.G.Konda Reddy, on behalf of the partnership firm, without authorisation, the trial Court in the judgement C.C.No.1647/2006 had observed that,

“The main defence of the accused is that the complainant not filed any document to show that the complainant is a partnership firm. Further more, the accused raised that Ex.P-1 is the ledger account extract and the complainant was silent regarding this Ex.P-1 in his complaint. These points cannot be considered as a point of rebuttal evidence in favour of the accused.”

11. In C.C.No.1648/2006, the Trial Court has not even considered the plea of maintainability. Further, in both the judgments, the Trial Court failed to address the plea of maintainability of the complaint by Konda Reddy, without authorisation of the partners.



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12. In the appeals, the point regarding maintainability had been specifically raised by the accused. Unfortunately, the Lower Appellate Court not only failed to apply the correct law, but also erred in misquoting the facts while considering the plea of maintainability

13. To point the illegality and perversity in the Lower Appellate Court judgment, para 14 of the judgment is extracted below:-

“On perusal of records, its is learnt by this court that the complaint was filed by the complainant through its Partner S.G.Konda Reddy. The complainant Company is a partnership firm and the person, who signed the compliant is one of the partner of the said partnership firm. Mr.S.G.Konda Reddy signed as a partner and the said Konda Reddy is having every right to prosecute the case and he can also give evidence on behalf of the partnership firm the complainant company. In this case Mr.Konda Reddy was examined as PW-1 and all the documents were exhibited through him and hence the contention raised by the Appellant Accused that the said Konda Reddy has not been properly authorised by the complainant Firm is not sustainable since as a partner he can represent the partnership and he can very well file a complaint and give evidence on behalf of the partnership firm.”

14. At the outset, it is to be noted that, there is no record to show that



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M/s Sashta Home Tech is a partnership firm and Mr.Konda Redddy is one of the partner of the firm. It is the averment in the complaint without any documents to that effect. During the cross examining Mr.Konda Reddy had said that he has filed the partnership deed, which is an incorrect answer. Later he has retracted and said he will produce the partnership deed. However, he did not produce it, neither before the Trial Court nor before the Lower Appellate Court. On scrutiny of the complaints, this Court finds that Mr.Konda Reddy has signed the complaint not on behalf of M/s Sashta Home Tech, but as an individual. Obviously, the observations of the Lower Appellate Court, which is extracted above is contrary to the records available and hence perverse.

15. Mr.Konda Reddy right to file the complaint and give evidence on behalf of the holder of the cheque namely M/s Sashta Home Tech will get crystallised only on production of the details of the partners and the partnership deed along with authorisation to represent the partnership firm. In the absence of these documents, the Court cannot presume that Ms.Konda Reddy is a partner of M/s Sashta Home Tech and he is duly authorised to represent the said Firm. The above legal position is well settled and reiterated in catena of



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judgments by High Courts as well as the Hon'ble Supreme Court. To cite few:-

(i) In Abdul Gafoor –vs- Adhul Rehman, reported in [1999(4) Crimes 1998], the Hon'ble Kerala High Court held that, “Complaint by partnership firm to the effect of non-registration of Firm under Section 69 of Partnership Act, is applicable only to a case involving civil rights. It has no application to criminal cases, since all partner is competent to represent the Firm and give evidence on behalf of Firm.”

(ii) The Hon'ble Supreme Court in BSI Ltd and another –vs- Gift Holdings Pvt. Ltd. and another reported in [2000 SCC (Cri) 538] held to the effect that, “a criminal prosecution under Section 138 of NI Act is neither for recovery of money nor for enforcement of any security etc., It is a penal action result in conviction and sentence, if proved. Therefore, Section 69(2) of Partnership Act is no bar to initiate a criminal complaint. This dictum of Hon'ble Supreme Court been followed by the Hon'ble Allahabad High Court in Gurcharan Singh –vs- State of UP and another, reported in [2002(4) Crimes 165] and by Hon'ble Andhra Pradesh High Court in Amith Desai and another –vs- Shine Enterprises and another reported in [2000 Crl.L.J 2386].

(iii) In a similar case, this Court in New Kruba Jeweller –vs- V.Kanchana



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WEB reported in [(2017)1395 SCL 264(Mds)] after referring the above judgments, has held that, *“on perusal of the complaint filed by the Appellant/Complainant (New Kruba Jewelers) under Sections 138 and 142 of Negotiable Instruments Act and Section 417 IPC r/w Section 200 Cr.P.C, this court finds that the Appellant/Complainant had only mentioned that it is a partnership firm represented by its partner, C.B.B. Sharavanan. Further more, there is no indication in the complaint that the Appellant/complainant is an unregistered partnership firm. Also that the said partner had affixed the signature in the verification column as complainant only in his personal/individual capacity and not described himself as an partner.”* Having observed so, the court concluded that,

“In the upshot of detailed qualitative and quantitative discussions as mentioned supra and also this Court taking note of the surrounding facts and circumstances of the instant case in an integral manner comes to an inevitable conclusion that the Appellant / Complainant / Jewellers before the trial court had not produced the unregistered Partnership Deed dated 03.04.1996 and further in the complaint filed by the Appellant he had filed the same by signing only as a complainant in his individual status / capacity



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WEB COUNCIL *without affixing seal / Rubber stamp of the firm (although in the cause title of the complaint Appellant/Firm was shown as one represented by its partner C.B.B.Sharavanan) and furthermore this Court bearing in mind that before the trial court the plea of 'maintainability of complaint' was not taken on behalf of the Respondent / Accused (not withstanding the fact that it is the legal plea), yet this Court without delving deep any further is of the considered view that an opportunity is to be provided to the Appellant / Complainant to file the unregistered Partnership Deed dated 03.04.1996 and to mark the same (Of course, subject to Proof, Relevancy and Admissibility). Viewed in that perspective this Court opines that the remand of the matter is just and necessary otherwise there would be a failure of justice”.*

(iv) Hon'ble Supreme Court of India in ***Bhupesh Rathod –vs- Dayashankar Prasad Charuasia, reported in (2022) 2 SCC 355*** had dealt at length about the natural person representing a juristic person in a criminal complaint, wherein it is observed that:

“As to what would be the governing principles in respect of a corporate entity which seeks to file the complaint, an elucidation can be found in the judgment of this Court in Associated Cement Ltd., -vs- Kesavanand reported



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in [(1998)1 SCC 687]. If a complaint was made in the name of the Company, it is necessary that a natural person represents such juristic person in the court and the court looks upon the natural person for all practical purposes. It is in this context that observations were made that the body corporate is a de jure complainant while the human being is a de facto complainant to represent the former in the court proceedings. Thus, no Magistrate could insist that the particular person whose statement was taken on oath alone can continue to represent the Company till the end of the proceedings. Not only that, even if there was initially no authority the Company can at any stage rectify that defect by sending a competent person.

(v) In *Bhupesh Rathod case*, the complainant is a registered company and complaint filed through its Managing Director along with the authorization letter. However, the Managing Director name placed first in the cause title of the complaint followed by the name of the Company. The authorization letter refers the Board resolution but not accompanied by the Board resolution signed by all the Board Members. Therefore, on these technical flaw, the Court below dismissed the complaint. While reversing the judgment of acquittal, the Hon'ble Supreme Court observed that, “



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22.....*“It would be too technical a view to take to defeat the complaint merely because the body of the complaint does not elaborate upon the authorisation. The artificial person being the Company had to act through a person/official, which logically would include the Chairman or Managing Director. Only the existence of authorisation could be verified.”*

23.*“While we turn to the authorisation in the present case, it was a copy and, thus, does not have to be signed by the Board Members, as that would form a part of the minutes of the Board meeting and not a true copy of the authorisation. We also feel that it has been wrongly concluded that the Managing Director was not authorised. If we peruse the authorisation in the form of a certified copy of the Resolution, it states that legal action has to be taken against the respondent for dishonour of cheques issued by him to discharge his liabilities to the Company. To this effect, Mr. Bhupesh Rathod/Sashikant Ganekar were authorised to appoint advocates, issues notices through advocate, file complaint, verifications on oath, appoint Constituent attorney to file complaint in the court and attend all such affairs which may be needed in the process of legal actions”.*

16. In the case under consideration, if the complainant had produced the copy of the partnership deed, this Court would have taken the view of remanding the matter to the Trial Court to receive additional document and decide afresh as done in the *New Kruba Jewellers* case cited supra. Else, had the complaint if been supported by authorisation as in the case of *Bhupesh*



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WEB COPY *Rathod*, following the Hon'ble Supreme Court Judgement would have decided the revision petition on merits considering the other grounds raised in the revision petition. Unfortunately, in this case, the complainant had neither placed the partnership deed nor the authorisation from the partners to initiate the complaint.

17. As discussed above, though a unregistered partnership firm can initiate criminal prosecution through its partners, such complaint can sustain only if the representative of the firm proves the fact that he is authorised by the partners to lay the complaint. In the absence of such authorisation, the complaint is bound to be dismissed.

18. In the instant case, the Courts below failed to follow the legal principle laid by the High Courts and Hon'ble Supreme Court regarding private complaint through representative. Therefore the illegality and perversity which is patently found in the judgments are to be reversed and set aside.

19. As a result, **Crl.R.C.No.297 of 2020 and Crl.R.C.No.305 of 2020**



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are allowed. The judgments in C.A.No.111/2016 and C.A.No.112/2016, dated 24/10/2019 confirming the judgements passed in C.C.No:1647 of 2006 and C.C.No.1648 of 2006 respectively are set aside. Consequently, connected Miscellaneous Petitions are closed. Any amount deposited by the accused/appellant as per condition for suspension of sentence, same is ordered to be returned to the accused.

18.05.2023

Index:yes
Speaking order/non speaking order
ari

To:

- 1.The IV Additional Sessions Judge, Chennai.
- 2.The Metropolitan Magistrate, FTC No.III, Saidapet, Chennai.



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Dr.G.JAYACHANDRAN, J.

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delivery Common Order made in
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