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Crl.O.P.No.6886 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.04.2023

Pronounced on : 18.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.6886 of 2021

and

Crl.M.P.No.4568 of 2021

J.N.Jahath Ramjee alias J.N.Ramji

...Petitioner/Accused

Vs.

Y.K.Mohanrao

...Respondent/Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.5995 of 2018 on the file of FTC – III, Metropolitan Magistrate Court, Saidapet, Chennai and quash the same.

For Petitioner : Mr.B.Kumar

Senior Counsel for

M/s.G.Muthukumar

For Respondent : Mr.K.V.Babu



ORDER

The petition is to quash the complaint in CC.No.5995 of 2019 on the file of Fast Track Court No.III, Metropolitan Magistrate Court, Saidapet, Chennai, for the alleged offence under Section 138 of the Negotiable Instruments Act, 1881.

2. It is alleged in the complaint that the petitioner had issued four cheques (a) Rs.8,25,00,000/- (Rupees Eight Crores Twenty Five Lakhs Only) (b) Rs.50,75,000/-(Rupees Fifty Lakhs and Seventy Five Thousand only) (c) Rs.9,75,00,000/- (Rupees Nine Crores Seventy Five Lakhs only) (d) Rs.10,15,000/- (Rupees Ten Lakhs Fifteen Thousand only) in the discharge of a part of his liability towards the respondent; that the said cheques were presented for collection and were returned for reasons “Funds Insufficient”; that in spite of notice sent to the petitioner, the petitioner did not make the payment. Hence, the complaint.

3. Mr.B.Kumar, the learned Senior Counsel for the petitioner/accused submitted that:-

(a) the complaint is not maintainable. The complaint was filed through a power of attorney. There is no averment in the complaint that



the agent had personal knowledge of the transactions. The learned Magistrate did not administer oath to the power agent, when the sworn statement was recorded and hence, the complaint is vitiated. The learned Senior Counsel relied upon:- (i) the Judgement of ***A.C.Narayanan vs. State of Maharastra*** reported in (2014) 11 SCC 790 and (ii) the order passed by this Court in ***Crl.O.P.No.13484 of 2017*** dated 20.11.2018.

(b) the complaint states that the cheques were dishonoured at the Valasaravakkam branch of the complainant company. The Valasaravakkam Police Station is within the Jurisdiction of learned Judicial Magistrate – I, Poonamallee. He produced a printout of the page from the official Website of the District Court of Tiruvallur to substantiate his claim. He also relied upon a Judgment of this Court in ***Poongudy S Chellam vs. Subramaniyan*** reported in ***2017 SSC online Mad 15612*** wherein this Court had held that Valasaravakkam is within the Jurisdiction of learned Judicial Magistrate No.I, Poonamalle in a similar case under Section 138 of Negotiable Instruments Act, 1881. Hence, the Fast Track Court No.III, Metropolitan Magistrate Court, Saidapet, Chennai, has no Jurisdiction to try the instant case.



(c) the cheques were allegedly issued from the petitioner's account held in ING Vysya Bank. However, the said Bank was amalgamated with Kotak Mahindra Bank in the year 2015. Pursuant to the amalgamation, the cheques issued by the amalgamated Bank lose validity.

4. Mr.K.V.Babu, the learned counsel for the respondent/complainant submitted that:-

(a) the power agent had personal knowledge of the transactions, and is a witness in the two Agreements entered into between the petitioner/accused and the respondent/complainant; that merely because there is no averment in the complaint that the Agent had personal knowledge of the transactions, the complaint cannot be quashed; and that it is for the trial Court to consider whether the complainant has proved his case. The learned counsel relied upon the Judgment of the Honourable Supreme Court in *TRL Krosaki Refractories Ltd. Vs. SMS Asia Private Limited and Others* reported in (2022) 7 SCC 612 in support of his submission.

(b) The learned counsel further submitted that the learned Magistrate has territorial Jurisdiction to try the offence.



The Valasaravakkam branch of the complainant is situated in Virugambakkam, which falls within the Jurisdiction of the learned Magistrate in Saidapet. Hence, the learned counsel for the respondent submitted that the point raised by the petitioner on Jurisdiction has to be rejected.

(c) Regarding amalgamation, the cheques issued by the accused were accepted and it was returned for the reasons “Funds Insufficient”. It was not returned for the reason that the cheques were no longer valid. The amalgamation has not made any difference, hence that point has to be rejected.

5. This Court finds that in *A.C.Narayanan Vs. State of Maharashtra and another* reported in (2014) 11 SCC 790; the Hon’ble Supreme Court held that there must be a specific assertion as to the knowledge of the power of attorney holder in the transaction explicitly in the complaint. The relevant observation is as follows:-

“33... 33.3. It is required by the complainant to make specific assertion as to the knowledge of the power of



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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.”

It is the specific case for the respondent that the power agent had knowledge of the transactions as he had signed as witness in the two Memorandum of Agreements dated 27.06.2013 and 21.05.2014 which are referred to in the complaint. Further the Honourable Supreme Court in ***TRL Krosaki Refractories Ltd Vs. SMS Asia Private Limited and others*** reported in (2022) 7 SCC 612 had held as follows:-

“17.In that view, the position that would emerge is that when a company is the payee of the cheque based on which a complaint is filed Under Section 138 of N.I.Act, the complainant necessarily should be the Company which would be represented by an employee who is authorized. Prima-facie, in such a situation the indication in the complaint and the sworn statement (either orally or by affidavit) to the effect that the complainant (Company) is represented by an authorized person who has knowledge, would be sufficient. The employment of the terms “specific



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assertion as to the knowledge of the power of attorney holder” and such assertion about knowledge should be “said explicitly” as stated in A.C.Narayanan (supra) cannot be understood to mean that the assertion should be in any particular manner, much less only in the manner understood by the Accused in the case. All that is necessary is to demonstrate before the learned Magistrate that the complaint filed is in the name of the “payee” and if the person who is prosecuting the complaint is different from the payee, the authorisation therefor and that the contents of the complaint are with his knowledge. When the complainant/payee is a company, an authorized employee can represent the company. Such averment and prima facie material is sufficient for the learned Magistrate to take cognizance and issue process. If at all, there is any serious dispute with regard to the person prosecuting the complaint not being authorised or if it is to be demonstrated that the person who filed the complaint has no knowledge of the transaction and, as such that person could not have instituted and prosecuted the complaint, it would be open for the Accused to dispute the position and establish the same during the course



of the trial. As noted in Samrat Shipping Co. Pvt. Ltd. (supra), dismissal of a complaint at the threshold by the Magistrate on the question of authorisation, would not be justified. Similarly, we are of the view that in such circumstances entertaining a petition Under Section 482 to quash the order taking cognizance by the Magistrate would be unjustified when the issue of proper authorisation and knowledge can only be an issue for trial.

18.In that view of the matter we are of the opinion that the High Court was not justified in entertaining the petition under Section 482 of Code of Criminal Procedure and quashing the order dated 05.11.2015, taking cognizance of the complaint filed by the Appellant.”

The above observations of the Honourable Supreme Court would clarify that the assertion about knowledge cannot be understood to mean that should be in any particular manner. That apart, the Honourable Supreme Court had held that it is for the accused to dispute the position during the course of trial. In view of the same, this Court is not inclined to accept the submission of the learned Senior Counsel for the petitioner;



that the impugned complaint has to be quashed on the ground that the power of attorney holder had no knowledge about the transactions. It is open to him to submit that the power agent had no knowledge of the transaction before the Trial Court.

6. As regards Jurisdiction, it is the case of the complainant that though the Valasaravakkam Police Station is within the Jurisdiction of learned Judicial Magistrate – I, Poonamallee, the complainant's Valasaravakkam Bank is situated in Virugambakkam which is within the Jurisdiction of the learned Metropolitan Magistrate Court, Fast Track No.III, Saidapet, Chennai. This again is a disputed question of fact and this Court cannot entertain the said disputed question in this quash petition.

7. As rightly submitted by the learned counsel for the respondent, the subject cheques were not dishonoured because the cheques lost its validity on account of amalgamation. They were dishonoured for reasons "Funds Insufficient". Thus amalgamation has made no difference in the instant case.



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8. For all the above reasons, this Court is not inclined to accept the submissions of the learned Senior Counsel for the petitioner. Hence, the instant quash petition is liable to be dismissed.

9. Accordingly, the Criminal Original Petition stands dismissed. Consequently, the connected Miscellaneous Petition is closed.

18.04.2023

dk

NCC: Yes/No

Index :Yes/No

Speaking/Non Speaking Order



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To

The Fast Track Court No.III,
Metropolitan Magistrate Court,
Saidapet,
Chennai.



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SUNDER MOHAN. J,
dk

Pre Delivery Order in

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