



Crl.O.P.No.13587 of 2023
and
Crl.M.P.No.8273 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :17.10.2023

Pronounced on :30.10.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

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and

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1.M/s Mangal Savitri Bizcon (P)Ltd.,
No.28, Bombay Samachar Marg,
3rd Floor, Fort, Mumbai 400 023,
Rep. By:Director Mr.Suresh Gaggar.

2.Mr.Suresh Gaggar, Director (60 years),
M/s Mangal Savitri Bizcon Private Limited,
302, Gaurav Apartment, Gokuldharm,
Goregaon, Mumbai 400 063.

3.Mr.Ramakant Gaggar, Director (49 years),
M/s Mangal Savitri Bizcon Private Limited,
302, Gaurav Apartment, Gokuldharm,
Goregaon, Mumbai 400 063.

.. Petitioners/Accused

/versus/

M/s Lakshmi Premises Private Limited,
Represented by Its Director/Authorised Signatory,
Mr.Swaminathan Chidambaram,
DS-6, Block D, Guru Paradise, 27,
7th Cross Street, Hindu Colony,
Nanganallur, Chennai 600 061.

.. Respondent/Respondent



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Criminal Original Petition has been filed under Section 482 of Cr.P.C., to quash the order dated 09.06.2023 passed in Crl.M.P.No.19558 of 2023 in S.T.C.No.4861 of 2022 on the file of the Fast Track Court-I, Metropolitan Magistrate Court, Allikulam Campus, Chennai and quash the complaint in S.T.C.No.4861 of 2022, in exercise of the inherent powers of this Hon'ble High Court u/s 482 Cr.P.C.

For Petitioners :Mr.B.Kumar, Senior Counsel for
Mr.N.Balaji

For Respondents :Mr.R.Subramanian

ORDER

The petitioners are accused in the private complaint under section 138 of NI Act, in S.T.C No: 4861/2022 taken cognizance by the MM (Fast Track Court -1), Egmore.

2. After examination of witnesses on either side, the accused/petitioners filed petition to quash to complaint on the ground, MM (FTC-1) Egmore lack of territorial jurisdiction to try the case. The Learned Metropolitan Magistrate on considering the facts and law dismissed the petition. Being aggrieved, the present petition is filed.



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3. Brief facts leading to this petition:

The respondent herein is the complainant before the trial court. In the complaint filed under section 138 of NI Act, it is stated that the first accused in a Private Limited Company. The second accused is its Whole time Director taking care of the day to day affairs of the first accused company. The third accused is the Director and signatory of the cheques dated 22/04/2022 drawn on HDFC Bank, Manekji Wadia Building, Nanik Motwani Marg, Fort, Mumbai issued in favour of the complainant for Rs 14,00,00,000/- (Rs Fourteen crores only) and for Rs 94,50,000/- (Rs nintyfour lakhs fifty thousand only) for discharge of loan received towards principal and interest respectively.

4. The cheques were presented on 22/04/2022 for collection through Indusind Bank, Kilpauk Branch, Chennai were the complainant maintaining his account. The cheques got bounces for funds insufficient, hence the complaint before Metropolitan Magistrate(Fast Track Court-1), Egmore, which is the jurisdictional Court for Kilpauk.



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5. The trial Court had completed the examination of witnesses on both side. During the examination of the witnesses, certain answers been elicited regarding the branch in which the complainant maintaining the account when the cheques were presented for collection.

6. The bone of contention by the petitioners is that the complainant who was initially maintaining his account in Nanganallur Branch of Indusind Bank, had given a request on 12/04/2022 to transfer his account to Kilpauk Branch. As per the Bank Statement of Account(Ex.D-2), the account transferred to Kilpauk Branch only on 17/05/2022. Therefore, on the date (22/04/2022) of presenting the cheques the complainant Bank was Nanganallur Branch of Indusind Bank. Hence mentioning Kilpauk Branch as its Banker and filing the complaint in MM Court at Egmore instead of Alandur court which have jurisdiction over Nanganallur alleged to be error of jurisdiction which is not curable irregularity but vitiate the proceedings under Section 461 (m) of Cr.PC.



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7. The trial Court after analysing the provisions in the Code concern with territorial jurisdiction and the provisions in the Negotiable Instruments Act, 1881, particularly Section 142(2)(a), the earlier attempt of the petitioners to get the complaint quashed by filing writ petition before the Bombay High Court, dismissed the petition for the reason recorded as under:-

This Court feels that the petitioners/accused only to delay the proceedings of the main case only filed these petitions. Petitioners/accused nowhere in their reply to the legal notice they have pleaded all this points except mere denials. The petitioner/accused having received the summons and having allowed the court take process had failed to elucidate the facts about the jurisdiction in their first appearance itself. The petitioner/accused had neither pleaded his reply nor he had filed any petition raising the question of jurisdiction clearly proves that this petition had been filed only to drag the proceeding thereby delaying the process of justice. During the course of cross-examination of DW2 had clearly admitted that the cheque was presented in the Kilpauk Branch and moreover he had admitted that any cheque presented in any branches at Chennai shall be processed for collection on the Centralized Hub at T. Nagar, Chennai and shall be returned with endorsement of the centralized hub and shall be sent to customer's address and if undelivered, the shall be sent to the base branch where the account was held.



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In this case the cheques were delivered correctly to the communication address and had it not been delivered it would have been sent to Kilpauk branch. Hence it's clear that the petition is liable to be dismissed on this ground also. The question of registered address of the complainant does not have any impact on jurisdiction since the question of jurisdiction comes only where the account was operated. Hence this petition is liable to be dismissed on this ground also. Other aspects argued by the learned counsel for the petitioners/accused are not subject matter of this petition and all those points are to be adjudicated in the main case. Therefore, those aspects conveniently omitted by this court to discuss in these petitions. Accordingly point is answered.

In the result this petition is dismissed.”

8. This Court heard the submission of the learned Senior Counsel for the petitioners and the learned counsel for the respondent/complainant and perused the records.

9. The undisputed facts in this case are:

(a) The subject cheques are dated 22/04/2022.



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(b) It was presented for collection on 22/04/2022 at Kilpauk Branch of Indusind Bank.

(c) Intimation memo about return of 'funds insufficient' received from the complainant Bank on 28/04/2022.

(d) Statutory notice sent to the accused on 02/05/2022.

(e) Complaint under Section 138 NI Act presented on 8th June 2022 before the Metropolitan Magistrate(Fast Track Court-1) Egmore mentioning the complainant bank falls within the police limit of G-3, Kilpauk Police Station which is well within the jurisdiction of Metropolitan Magistrate Court, Egmore.

10. According to the learned Senior Counsel for the petitioners, the entries in the statement of account (Ex.D-2) proves that the request for transfer of account from Nanganallur Branch to Kilpauk Branch was acted upon and given effect only on 22/05/2022. Therefore, on the date of presentation of the cheques, it was Nanganallur Branch in which the complainant maintaining the account on the date he presented the cheques for collection.

11. The learned Senior Counsel also rely on Section 461 (m) of the Code of Criminal Procedure to buttress his argument that the complaint being



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tried as summary trial case, it is vitiated for want of jurisdiction since the magistrates not empowered to try the case.

12. To buttress their arguments, the learned Counsels rely upon the following judgments decided on the jurisdiction of Criminal Courts particularly under Negotiable Instruments Act, 1881.

(i)M/s Modi Cements Ltd –vs- Shri Kuchil Kumar
Nandi:[(1998)3 SCC 249];

(ii)M/s Bridgestone India (P) Ltd –vs- Inderpal Singh: [CDJ
2015 SC 938].

(iii)Kaushik Chatterjee –vs- State of Hayana and others:
[(2020) 10 SCC 92].

(iv)Yogesh Upadhyay and another –vs- Atlanta Ltd: [2023
LiveLaw (SC) 125].

13. These judgments are helpful for the Court to understand the law on territorial jurisdiction applicable in Negotiable Instruments Act cases. However, in the case in hand, a unique fact which has not even been foreseen by the Legislators had cropped up. Hence, for the facts in hand, the law needs



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to be applied and understood. Therefore, first let us examine the facts of the case in the light of Section 142((2) of Negotiable Instruments Act, 1881 which says,

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.- For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account”.

14. The examination of documents marked during the trial reveals that the Board of the Directors of the complainant's company had resolved to change the base bank from Nanganallur to Kilpauk on 12/04/2022 and the same had been communicated to the Bank on 12/04/2022. The scrutiny of the subject cheques dated 22/04/2022, which are marked as Ex.P-7 and Ex.P-8, we find the seals of IndusInd Bank, Kilpauk Branch on it. The cheque return memo's are from the Centralised Clearing Centre (in short “CCC”) at T.Nagar.



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15. The Manager of IndusInd Bank, Naganallur Branch examined as DW-1 admits that the subject cheques Ex.P-7 and Ex.P-8 were deposited in Kilpauk Branch. Further, he had deposed that at the time of presentation and dishonouring of these cheques, the base branch of the complainant company was Nanganallur Branch.

16. The testimony of the DW-1 read along with the explanation to Section 142(2)(b), makes clear that on the date of presentation of the cheques at Kilpauk Branch, the complainant base branch was Nanganallur and his request for transfer to Kilpauk Branch not given effect.

17. Will this vitiate the prosecution is the question need to be answered in the light of Sections 460 and 461 of Cr.P.C and Section 142 of Negotiable Instruments Act, 1881.

18. The submissions of the learned Senior Counsel for the petitioners is that on the date of presentation of the cheques, the base branch of the complainant is Nanganallur Branch by applying the explanation to Section



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142(2)(a) of Negotiable Instruments Act, 1881, the Metropolitan Magistrate Court at Egmore, have no jurisdiction to try the complaint. The trial Court has tried the offender summarily without jurisdiction. Hence, under Section 461(m) gets vitiated. Whereas, the learned counsel for the respondent/complainant contention is that, after giving request letter for transfer of account to Kilpauk Branch and having presented the cheques for collection at Kilpauk Branch, the Metropolitan Magistrate Court at Egmore gets jurisdiction to try the case. According to the counsel for the respondent, the delay in effecting transfer of account on the part of the Bank cannot prejudice the complainant. The Kilpauk Branch deemed to be the base branch of the complainant. Even otherwise, it is only an irregularity, which will not vitiate the trial.

19. Section 461 (m) of Cr.P.C., reads as under:-

461.Irregularities which vitiate proceedings- If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:-

(a) ..

(b)..

.....

(m) tries an offender summarily:

....



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(q)revises an order passed under Section 446,

His proceedings shall be void.

20. At the outset it has to be recorded that, the provisions of Negotiable Instruments Act, 1881 empowers the Magistrate to try complaints under Section 138 of NI Act summarily. Therefore, the trial Court, which has taken cognizance of the complaint and proceeded to try as summary trial, is well within the law and Clause (m) of Section 461 of Cr.P.C will not apply to the facts of this case.

21. At the most, it could be error of taking cognizance of a complaint under Section 190 (1)(a) of Cr.P.C and proceeding thereon. Such irregularity will not vitiate the trial (refer:Section 460 (e) of the Code).

22. The other point is whether the trial Court has assumed territorial jurisdiction, which is not vested on it. The narration of the facts of this case highlights a peculiar situation, which was not contemplated by the Legislatures while introducing the explanation by way of Amendment to Section 142 of the Act. An harmonious interpretation of the explanation and the mischief which it



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sought to be cured, can only lead to the decision of dismissing the petition.

23. Having given request for transfer to Kilpauk Branch and presenting the cheque at Kilpauk Branch, the complaint is filed before Metropolitan Magistrate (FTC-1) Egmore, which deemed to have territorial jurisdiction. The petitioners on receipt of the summons from the Court had participated in the trial cross examined the complainant and also marshalled their witnesses. At the fag end of the trial, he had filed the petition to dismiss the complaint on the ground of lack of jurisdiction. In view of this Court, the request for transfer of his account to Kilpauk Branch made by the complainant on 12/04/2022, which is prior to the presentation of the cheques and subsequent presentation of the cheques at Kilpauk branch saves the complaint from being vitiated. The irregularity what so ever had not caused prejudice to either side, the petition filed after examining the witnesses and at the fag end of the trial is another factor which desists this court to exercise its power under Section 482 Cr.P.C.



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24. In view of the peculiarity of the facts in this case, a strict interpretation of the explanation to Section 142 of Negotiable Instruments Act will be against the spirit of the legislative intend. The trial Court had considered the law and facts, balancing the interest of either side with reasoning had dismissed the petition. On appreciation of law and facts, which are unique to the present case, this Court hold that the order of the trial Court is well based on law and fact and to be confirmed.

25. In the result, the Criminal Original Petition is dismissed. There shall be no legal impediment for the trial Court to proceed and deliver the judgment. Consequently, connected Miscellaneous Petition is closed.

30.10.2023

Index:yes

Speaking order/non speaking order

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To:

1.The Metropolitan Magistrate, Fast Track Court No.1, Egmore at Allikulam, Chennai.

2.The Public Prosecutor High Court, Madras.



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Dr.G.JAYACHANDRAN, J.

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delivery Order made in
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