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CrI.O.P.No.19083 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.O.P.No.19083 of 2021
and CrI.M.P.No.10437 of 2021

Prabhavathy

...Petitioner

Vs.

Mohammad Sajjad

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C.,
to call for the records and quash the complaint in S.T.C.No.343 of 2020
on the file of the learned Judicial Magistrate-1, Tambaram.

For Petitioner : Mr.G.Prabhakar

For Respondent : Mr.K.Perumal

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.343 of 2020 on the file of the learned Judicial Magistrate-1, Tambaram, thereby taken cognizance for the offences under Sections 138, 141 of the Negotiable Instruments Act (hereinafter called as “the NI Act”)

2. The petitioner is an accused in the complaint lodged by the



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respondent for the offence under Section 138 of NI Act. The case of the respondent is that the petitioner agreed to sell the subject property situated at Bangalore for the total sale consideration of Rs.36,00,000/- in favour of the respondent and received a sum of Rs.32,00,000/- as advance. The petitioner also executed an agreement for sale dated 02.07.2019. However, the petitioner failed to execute any sale deed in favour of the respondent and keeping on postponing the registration for one and other reasons. In fact, the petitioner also failed to furnish the title document in respect of the subject property.

3. Thereafter, the agreement for sale by mutual consent came to be cancelled in the Deed of Cancellation of Agreement of Sale dated 12.09.2019 and accordingly the petitioner agreed to return the advance amount with interest. Accordingly, the petitioner had issued five cheques for the total sum of Rs.36,00,000/- and all the cheques were presented for collection. However, all the cheques were returned dishonour for the reason insufficient fund. After causing legal notice as contemplated under Section 138 (b) of the NI Act, lodged complaint as against the petitioner



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for the offence under Sections 138, 141 of the NI Act.

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4. After taking cognizance, the trial Court issued summon to the petitioner. On receipt of the same, the petitioner approached this Court to quash the proceedings on the ground that the agreement holder viz., Mohammed Sajjad delegates powers in favour of his father to deal with the issue. Thereafter, his father viz., Mohammad Illiyas delegates power in favour of one Neha Parvin to deal with the issue. She lodged complaint under Section 138 of the NI Act as against the petitioner.

5. That apart, the petitioner issued five cheques, in which one of them was issued in favour of Neha Parvin and others were issued in favour of Mohammad Sajjad. After presenting the said cheques and after dishourning the same, the respondent viz., Mohammed Sajjad only issued notice in respect of all the cheques. But the said Neha Parvin did not issue any notice for dishourning the cheque issued in her favour to the tune of Rs.7,00,000/-. Therefore, without issuing notice in respect of the cheque bearing No.000258 dated 15.10.2016, no cause of action arose to lodge



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complaint as against the petitioner.

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6. Heard the learned counsel appearing on either side and perused the material placed before this Court.

7. On perusal of the records revealed that the petitioner had executed an agreement for sale in favour of the respondent after receiving of advance amount of Rs.32,00,000/- as part of the sale consideration on 02.07.2019. However, the petitioner did not execute any sale deed as such the respondent immediately cancelled the agreement for sale and the cheques which were given for the purpose of security were presented for collection.

8. There were five cheques in which, the cheque bearing No.000258 dated 15.10.2019 for a sum of Rs.7,00,000/- was issued in favour of Neha Parvin viz., the power holder and other cheques were issued in favour of Mohammad Sajjad viz., the principal. All the cheques were presented for collection and the same were returned dishonoured.



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The legal notice was caused as contemplated under Section 138 (b) of the NI Act, on behalf of the Mohammad Sajjad, in respect of all the cheques including the cheque issued in favour of Neha Parvin. On behalf of Neha Parvin, no notice was issued to the petitioner. Therefore, there was no cause of action arose to lodge complaint as against the petitioner in respect of dishonouring of cheque bearing No.000258 dated 15.10.2019 to the tune of Rs.7,00,000/-.

9. Insofar as other cheques are concerned, Mohammad Sajjad caused notice to the petitioner and thereafter appointed his father as power agent to deal with the issues relating to the purchase of property and for other purposes through General Power of Attorney on 13.11.2019. In turn, his father viz., Mohammad Iliyas has executed another Power of Attorney in favour of one Neha Parvin. Unless any terms, the power holder viz., Mohammad Sajjad in the General Power of Attorney executed by his son, he cannot delegate the power in favour of Neha Parvin.



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10. In this regard the learned counsel appearing for the petitioner relied upon the judgement reported in **(2014) 11 SCC 809** in the case of ***A.C.Narayanan Vs. State of Maharastra and anr.,*** which held with regard to sub-delegation of function of Power of Attorney . The Attorney holder can sign and file complaint on behalf of the complainant payee. However, whether the Power of Attorney holder will have the power to further delegate the functions to another person will completely depend on the terms of the general power of attorney. As a result, the authority to sub-delegate the functions must be explicitly mentioned in the general power of attorney. Otherwise, the sub-delegation will be inconsistent with the general power of attorney and thereby will be invalid in law. Nevertheless, the general power of attorney itself can be cancelled and be given to another person.

11. Thus, it is clear that 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. Unless, the general power of attorney itself can be cancelled and be given to another person. Therefore,



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the complaint filed by the another power of attorney is illegal and bad in law. Hence, the complaint itself cannot be sustained and it is liable to be quashed.

12. Accordingly, the proceedings in S.T.C.No.343 of 2020 on the file of the learned Judicial Magistrate-1, Tambaram, is hereby quashed and the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

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Internet: Yes

Index : Yes/No

Speaking/Non speaking order

rts

To

1. The Judicial Magistrate-1,
Tambaram.



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G.K.ILANTHIRAIYAN. J.

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