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Crl.O.P.Nos.16438 and 2443 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.16438 and 2443 of 2023
and Crl MP Nos.19954 and 19956 of 2022

Cause Title for Crl OP No.16438 of 2023

1. M/s.Nilanjana Fashions P Ltd,
Represented by its Authorised Signatory /Director
Mr.Shankar Saraf
Having its registered office at
Shreelekha Apartment,
42A, Park Street, 6th Floor,
Kolkata 700 016

2. Mr.Shankar Saraf

3. Mr.Hari Ram Saraf

... Petitioners

Vs.

M/s.Kotak Mahindra Bank Limited
No.39, Ceebros Centre 2nd Floor,
Montieth Road Egmore,
Chennai 600 008
Rep. By its Chief Manager,
Mr.Ragotharam

... Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of the Code of
Criminal Procedure, to call for the records in and connected with CC No.1534 of



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2018 on the file of Metropolitan Magistrate, IV Fast Track Court, George Town,
Chennai.

Cause Title for Crl OP No.2443 of 2023

Hari Krishna

... Petitioner/3rd Accused

Vs.

M/s.Kotak Mahindra Bank Limited
No.39, Ceebros Centre 2nd Floor,
Montieth Road Egmore,
Chennai 600 008
Rep. By its Chief Manager,
Mr.Ragotharam

... Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of the Code of
Criminal Procedure, to call for the records in and connected with CC No.1534 of
2018 on the file of Metropolitan Magistrate, IV Fast Track Court, George Town,
Chennai.

Both Crl OPs

For Petitioners : Mr.B.Satish Sundar

For Respondents : Mr.T.Shanmuganandan

COMMON ORDER

These petitions have been filed to quash the proceedings pending in
CC No.1534 of 2018 on the file of the Metropolitan Magistrate, IV Additional Fast



Track Court, George Town, Chennai.

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2. The respondent bank has filed a private complaint against the petitioners for offence under Section 138 of the Negotiable Instruments Act. A1, A2 and A4 filed Crl OP No.16438 of 2023 and A3 has filed a quash petition in Crl OP No.2443 of 2023.

3. When the matter came up for hearing on 21.08.2023, this Court passed the following order :-

This Court entertained Crl OP No.16438 of 2023, only on the ground that the complaint was filed with a delay and the Court below had taken cognizance of the complaint without condoning the delay.

2. When the matter was taken up for hearing today, the learned counsel for the petitioners submitted that the ground that was taken during the previous hearing on 31.07.2023 may not be right since the Court below specifically passed an order condoning the delay and only thereafter cognizance was taken. Therefore, the learned counsel submitted that he is giving up the said stand taken.

3. During the course of arguments, the learned counsel for the



petitioners touched upon the very territorial jurisdiction of the Court to entertain the complaint and to substantiate the same, the learned counsel brought to the notice of this Court the order passed in Crl OP No.17937 of 2017, dated 19.05.2020. The learned counsel for the respondent bank seeks for sometime to go through the judgement and make his submissions.

4. Post these criminal original petitions under the caption for orders on 18.09.2023. In the meantime, the interim order already granted by this Court shall stand extended.

4. Heard Mr.B.Satish Sundar, learned counsel for the petitioner and Mr.T.Shanmuganandan, learned counsel for respondent.

5. The learned counsel for the petitioners raised the following grounds :-

(a) The complaint has been filed in a Court which does not have the territorial jurisdiction to entertain the complaint.

(b) A3 has already resigned as a Director as early as on 18.11.2016 and whereas, the cheque in question was issued on 29.07.2017. To substantiate the same, the learned counsel relied upon Form No.DIR



11 and DIR 12 filed before the Registrar of Companies and

(c) There are no specific allegations in this complaint as against A4 as to how and in what manner, A4 is in-charge and responsible for conducting the day today affairs of the company.

6. Per Contra, the learned counsel for respondent submitted that the complaint has been filed in the Court which had the Territorial jurisdiction. To substantiate this submission, the learned counsel relied upon the judgement of the Apex Court in ***Yogesh Upadhyay and Another Vs. Atlanta Limited reported in AIR 2023 SC 115***. Insofar as the 2nd ground with respect to A3, the learned counsel submitted that the resignation of A3 from the company is a question of fact which cannot be decided in the quash petition. With respect to the last submission made by the learned counsel for the petitioner insofar as A4 is concerned, the learned counsel specifically placed reliance upon Para Nos. 5 and 6 in the complaint wherein it has been stated that A2 to A4 are in-charge and responsible for conducting the day today affairs of the company and they are involved in the management activities and functioning of the A1 company. To substantiate the same, the learned counsel relied upon the judgement of the Apex Court in the case of ***[K.K.Ahuja Vs. V.K.Vera and another]*** in ***Crl A No.1130 and 1131 of 2003***.



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7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. The main ground that was raised by the learned counsel for the petitioner is that the bank account of the respondent is at Calcutta and the entire cause of action had arisen in Calcutta and the Court below does not have the jurisdiction to entertain the complaint merely on the ground that the cheque was presented within the branch office which comes within the jurisdiction of the court. The learned counsel to substantiate this submission relied upon the order passed by this Court in Crl OP No.17937 of 2017 dated 19.05.2020.

9. It is not necessary for this Court to consider this issue in detail by virtue of the judgement of the Apex Court in ***Yogesh Upadhyay*** referred supra. The Apex Court after considering all the earlier judgments on the issue, came to a categorical conclusion that the cheque which is presented even in the branch office of the bank will vest the territorial jurisdiction of the Court within which the branch office of the bank is situated. To arrive at such a conclusion, the Apex Court took into consideration the amendment through which Section 142 (2) (a) was brought into force and also Section 142 (a). In view of the same, the earlier



order passed by this Court in Crl OP No.17937 of 2017 cannot be relied upon since this Court is bound by the judgement of the Apex Court. Accordingly, the 1st issue that was raised by the learned counsel for the petitioner is answered in favour of the respondent / complainant.

10. With respect to the 2nd issue concerning A3, it is seen from Form No.DIR 11 and DIR 12 that A3 has resigned from A1 company on 18.11.2016 and it became effective from 01.12.2016. The cheque in question was issued only on 29.07.2017. Therefore, it was contended that A3 ought not to have been added as an accused in this case.

11. The effect of the certificate issued by the Registrar of Companies was considered by the Apex Court in ***[Anita Malhotra Vs.Apparel Export Promotion Council and another]*** reported in ***2012 1 SCC 520***. The Apex Court held that normally the materials relied upon by the defence cannot be considered in a quash petition. However, the only exception is where the documents in question is unimpeachable in character. The relevant forms showing the resignation of A3 has been issued by a competent authority which shows that A3 has resigned from A1 company on 18.11.2016. This document is of sterling quality since it has been issued by the statutory authority competent to issue such forms. Therefore,



reliance can be placed on those documents. In view of the same, the continuation of the proceedings as against A3 has to be necessarily interfered by this Court. This issue is answered in favour of the petitioner (A3).

12. The last issue pertains to A4 in this case. On carefully reading the 5th and 6th paragraph in the complaint, it is seen that the language used under Section 141 of the Negotiable Instruments Act has been reproduced in these paragraphs. The judgement relied upon by the learned counsel for the respondent in ***K K Ahuja case*** has been sufficiently watered down by the Apex Court in the subsequent judgments. Useful reference can be made to the judgment of the Apex Court in ***[Central Bank of India Vs. Asian Gobal Limited and others]*** reported in ***2011 1 SCC Crl 167***. This judgment was relied upon by this Court in ***[Anil Pathak and another Vs. Larsen and Toubro Limited]*** reported in ***2019 1 MLJ Crl 385***. It is seen from these judgments that in case of a director of a company, the complainant should specifically state how and what manner the director was incharge of and responsible for the conduct of the business of the company and merely a bald statement that he is in-charge and responsible for the day today affairs of the company is not sufficient. These judgments will squarely apply to the case of A4. Accordingly, the proceedings against A4 is also liable to be interfered by this Court.



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13. In the light of the above discussion, the proceedings in CC No.1534 of 2018, pending on the file of the Metropolitan Magistrate, Fast Track Court, George Town, Chennai, is quashed insofar as A3 and A4 are concerned and it is left open to the Court below to proceed further with the complaint insofar as A1 and A2 are concerned and the proceedings in CC No.1534 of 2018 shall be completed by the Court below within a period of three months from the date of receipt of a copy of this order.

14. These criminal original petitions are disposed of in the above terms. Consequently, the connected miscellaneous petitions are closed.

19.09.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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To

1. The Metropolitan Magistrate, Fast Track Court, George Town, Chennai
2. The Public Prosecutor, High Court, Madras



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N.ANAND VENKATESH, J.

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