



Crl.O.P.No.19141 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.19141 of 2023

and

Crl.M.P.Nos.12856 & 12857 of 2023

S.Sanjay

.. Petitioner

/versus/

S.Maheswaran

.. Respondent

Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in S.T.C.No.2604 of 2023 on the file of the learned XXV Metropolitan Magistrate at Egmore, Chennai and quash the same as far as this petitioner.

For Petitioner :Mr.R.Vivekananthan

For Respondent :Mr.J.Ashok

ORDER

This Criminal Original Petition is filed to quash the private complaint under Section 138 of Negotiable Instruments Act, on the sole ground that the



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complaint filed through Power of Attorney does not speak about his knowledge regarding the transaction involving issuance of cheque.

2. The holder of the cheque Mr.Maheswaran has appointed his brother Rajene kanth as Power of Attorney to pursue the complaint under Section 138 of N.I.Act against the petitioner herein. The said complaint having satisfied of other requirements to take cognizance of the offence is now pending before the XXV Metropolitan Magistrate, Egmore in S.T.C.No.2604 of 2023.

3. The learned counsel appearing for the accused who is the petitioner herein submits that neither in the Power of Attorney deed authorising the brother to initiate the prosecution nor in the complaint there is any reference about the knowledge of the Power Agent to represent the Principal who is the holder of the cheque. Therefore, seek for quash the complaint.



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4. In support of his submissions, the learned counsel rely upon the dictum laid by the Hon'ble Supreme Court in *A.C.Narayanan Vs. State of Maharashtra and another* reported in (2014) 11 Supreme Court Cases 790, paragraph Nos.33 to 33.4 is extracted below:-

*“33. While holding that there is no serious conflict between the decisions in M.M.T.C and Janki Vashdeo Bhojwani, we clarify the position and answer the questions in the following manner:*

*33.1. Filing of complaint petition under Section 138 of the NI Act through power of attorney is perfectly legal and competent.*

*33.2 The power of attorney holder can depose and verify on oath before the Court in order to prove the contents of the complaint. However, the power of attorney holder must have witnesses the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions*

*33.3 It is required by the complainant to make specific assertion as to the knowledge of the*



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*power of 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.*

*33.4 In the light of Section 145 of the NI Act, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the NI Act and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the Court, nor to examine the complainant or his witness upon oath for taking the decision whether or not to issue process on the complaint under Section 138 of the N.I.Act.”*

5. The learned counsel for the petitioner would submit that in the complaint under Section 138 of N.I.Act, filed through Power of Attorney, an affidavit has to be filed in lieu of examination in chief which is permissible under Section 145 of N.I.Act and it is permissible to the complainant to



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narrate the circumstances under which the cheque was issued for discharging the liability.

6. The learned counsel for the respondent would submit that a omission to state about the knowledge of the transaction by the power agent is a curable defect and particularly in this case, the power agent is none other than own brother of the holder of the cheque and therefore, the petition to quash is liable to be dismissed. Unlike most of the offences which are against the State, offence under Section 138 of N.I.Act is a non cognizable offence. Cognizable offence can be taken only after the compliance of the pre-requisites laid down under Section 142 of the Act. Therefore, at the time of taking cognizance, the person who set the criminal law into motion must explain in the complaint itself how he acquire knowledge about the transaction, if he is the power agent of the complainant.



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7. The sum and substance of the dictum laid by the Supreme Court in *A.C.Narayanan Vs. State of Maharashtra and another*. Further, explanation of the knowledge or circumstances can be said in the course of the trial when evidence is recorded. On affidavit, what is not stated in the complaint or in the Power of Attorney deed cannot be introduced at the later point of time.

8. The aforesaid dictum of Supreme Court laid that the power agent must have prior knowledge of the transaction to file the complaint, in this case when the complaint is silent about the knowledge of the transaction, the said fact cannot be introduced at the later point of time either through the Power of Attorney or through Principal. Since there is an inherent defect in the complaint in respect of the locus of the agent to lay the complaint, this Court is inclined to allow the petition. Hence this Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petitions are closed. Criminal complaint in S.T.C.No.2604 of 2023 on the file of the learned XXV Metropolitan Magistrate at Egmore,



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Chennai stands quashed.

9. The learned counsel for the respondent states that since the holder of the cheque was in abroad, the complaint was filed through the power agent who is none other than his brother and if the said complaint through Power of Attorney is not sustainable in the eye of law, the holder of the cheque may be permitted to file a fresh complaint and the delay in filing the complaint may be condoned. It is open to the respondent herein to resort to such action if law permits and if the trial Court is satisfied regarding the reason for delay may condone delay and entertain the complaint.

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Index:yes/no

Netural Citation:yes/no

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To:

The XXV Metropolitan Magistrate, Egmore, Chennai.

Dr.G.JAYACHANDRAN,J.

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