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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 06/01/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.RC(MD)No.802 of 2022

and

Crl.MP(MD)Nos.9892, 9894 and 9896 of 2022

- 1.Frontline NCR Business Solution
P Ltd., Represented by its Director
Mr.Pushpesh Kumar Sinha,
(A Company registered under
Companies Act, 2013)
Naraina Industrial Area,
B-48, Ground Floor,
Phase-2,
Industrial Area,
New Delhi-110 028.
- 2.Mr.Sanjay Sinha,
Director,
Frontline NCR Business Solution
P Ltd., Naraina Industrial Area,
B-48, Phase-2, Industrial Area,
New Delhi-110 028.
- 3.Mr.Pushpesh Kumar Sinha,
Director,
Frontline NCR Business Solution
P Ltd.,
Naraina Industrial Area,
B-48, Phase-2, Industrial Area,
New Delhi-110 028.
- 4.Mr.Narendrakumar Singh,
Director,
Frontline NCR Business Solution
P Ltd.,
Naraina Industrial Area,
B-48, Phase-2, Industrial Area,
New Delhi-110 028.



5. Mr. Birendrakumar,
Director,
Frontline NCR Business Solution P Ltd.,
Naraina Industrial Area,
B-48, Phase-2, Industrial Area,
New Delhi-110 028. : Revision Petitioners/A1 to A5

VS.

M/s.Redington (India) Ltd.,
Represented by Mr.Bharani Yadev,
(vide resolution dated 11 Nvo 2020)
Legal Executive,
C-48B, First Floor,
11th Cross Road,
Thillainagar,
Tiruchirappalli-620 018. : Respondent/Complainant

Prayer: Criminal Revision is filed under Sections 397 and 401 of the Criminal Procedure Code, to call for records pertaining to the order, dated 06/01/2021 in STC No.51 of 2021 taking cognizance of the offence under section 138 of the Negotiable Instruments Act by the Judicial Magistrate No.IV, Tiruchirappalli and set aside the same.

For Petitioners : Mr.S.Jayavel

For Respondent : Mr.S.Muthukrishnan

ORDER

This criminal revision has been filed seeking to set aside the order, dated 06/01/2021 in STC No.51 of 2021 taking cognizance of the offence under section 138 of the Negotiable Instruments Act by the Judicial Magistrate No.IV, Tiruchirappalli.

**2. The facts in brief:-**

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The respondent herein filed a private complaint under section 200 Cr.P.C stating that it is a Public Limited Company and doing the business of distribution of IT and NON-IT products. In the course of the above said business activities, the accused persons were also having business dealings, they have placed orders and purchased the valuable articles, etc. through the invoices as detailed in the complaint.

S.No.	Date of Invoice	Invoice Nos.	Amount
01.	13.02.2019	B049859	4832836.32
02.	14.02.2019	B049863	1344350.40
03.	14.02.2019	B049864	3746943.68
04.	14.02.2019	B049865	753042.96
05.	07.03.2019	B049947	1068072.28
06.	08.03.2019	F474223	1397384.30
07.	08.03.2019	F474225	4616838.50
08.	15.03.2019	F474753	683421.78
09.	18.03.2019	B049965	6065933.96
		TOTAL	24508824.18

So in discharge of the above said liability, the complainant issued a cheque for Rs.2,45,08,824/- drawn on Axis Bank Ltd., Rajinder Nagar, New Delhi-110 060 and that was deposited for payment through their Banker namely HDFC Bank, Thillai Nagar, Trichy, on 04/11/2020, but that came to be dishonoured due to the reason "Drawer's sign



differs". The intimation was received by the company, on 07/11/2020. They issued a statutory notice, dated 11/11/2020 to all the accused persons. Even though, they received the notice, they failed to make the payment. But a request has been received, on 02/12/2020 making untenable averments.

3.The first accused is the Limited Company and A2 to A5 are the Directors. They personally involved in the above said transactions. So they were jointly and severally liable.

4.The above said case was taken cognizance by the trial court, on 06/01/2021 and summons were issued. After that, this revision petition has been filed making several grounds.

5.Heard both sides.

6.It is a business transaction issue involving the issuance of cheque and subsequent dishonour, etc., facts. On the face of it, even though, the case appears to be simple, several grounds have been raised by the petitioners stating that no company seal is found in the cheque and who issued the cheque is not identified, since the cheque has been dishonoured due to the difference in signature; So the



offence under section 138 of the Negotiable Instruments Act is not attracted.

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7. Apart from that, it is also stated that sufficient materials have not been placed before the trial court to take cognizance of the case. So also the jurisdiction point has also been raised that there was no legally enforceable liability between the accused persons and the complainant.

8. The learned counsel appearing for the petitioners went to the extent of stating that as contemplated under section 202(2) Cr.P.C, the trial court ought to have sent the complaint for proper investigation by police.

9. Now let us straightaway go to the documents that are filed by the complainant. The copy of the invoices to show the transactions between the parties have been produced. The disputed cheque copy is also available, wherein we see that the drawee name is mentioned as 'Redington India Limited', the complainant herein, it was stated to be signed by one of the Authorised signatories on behalf of the company called 'FRONTLINE (NCR) BUSINESS SOLUTIONS PVT LTD'. It is a printed cheque leaf, from which, it appears that it has been signed and who made the signature in the cheque is not known. Even the complainant and the petitioners herein are not able to say anything.



The petitioners simply says that they did not know the signature. But as mentioned earlier, it is a printed cheque leaf stating that it is issued in the name of the petitioners' company. So they cannot disown the same. On what ground, the above said signature has been made by the concerned person and what is the capacity of the concerned person is a matter for consideration by the trial court. More particularly, in reply to the statutory notice, the 1st petitioner as Authorised Signatory sent reply, on 02/12/2020 stating that they have received the communication, stating the particulars are incorrect and they will face the litigation as per law, if any. Nowhere, it has been stated that the above said cheque was not issued by the company and that too by Authorised Signatory. But the signature differ the Authorised Signatory in the reply notice from that one mentioned in the cheque. So as mentioned above, who made the signature is a matter for the consideration by the trial court.

10. Since this criminal revision has been preferred against the order of taking cognizance by the trial court, factual issues cannot be taken into account and gone into. When sufficient materials have been placed before the trial court for taking cognizance of the case, I find absolutely no illegality or irregularity in taking cognizance by the trial court. So the contention that has been raised by the



petitioners that in case of offence under section 138 of the Negotiable Instruments Act, only the courts in Chennai is having jurisdiction, cannot also be taken into account at this stage, because the parties cannot confer the jurisdiction upon the court, which does not have. This is the fundamental principle. Even the terms and conditions of the contract have also been produced. So it appears that they are admitting the transactions and this is sufficient for taking cognizance.

11. With regard to the issue, whether the offence under section 138 of the Negotiable Instruments Act will be attracted, when the cheque has been disputed due to the signature differs, has also been canvassed by the petitioners. But the judgment of the Hon'ble Supreme Court reported in the case of **Vinod Tanna Vs. Zaheer Siddiqui [(2022) 7 SCC 541]**, the subsequent judgment of the Hon'ble Supreme Court shows that even the cheque dishonoured due to the differ in signature, the complaint under section 138 of the Negotiable Instrument Act can be maintained. So this cannot be taken advantage by the petitioners now. Whether there was any sufficient fund available in the Bank account at the time of issuing the cheque can also be a matter for consideration by the trial court.



12.The further contention is that since the company has been made as an accused, the complainant ought to have mentioned, who is the Authorised Signatory and who is responsible for the day today affairs. For that purpose, they relied upon the order of this court made in the case **of Vayam GMV Intelligent Transport Pvt. Ltd., Vs. M/s.Interlace India Pvt. Ltd (2021-2-LW(Cr1) 718**, in respect of the criminal prosecution against the Directors of the company. Now it is more or less well settled, the role played by the concerned person must be clearly stated and the person, who is responsible for the day today affairs must also be clearly stated, there can be no quarrel on the proposition of law. But here, as mentioned earlier, there is a denial on the part of the petitioners to have issued the cheque. But, who issued the cheque, as mentioned earlier, is a matter for trial and the complainant is not in a position to identify the Authorised Signatory. The company ought to have given proper reply. But they have simply sent a reply disputing the liability.

13.Another important factor, which came to light is that warrant was issued against Narendrakumar Singh, one of the Directors of the company and he filed a petition to recall the warrant and that was also dismissed by the trial court, against which, SLP was preferred.



14.It appears that no steps have been taken and the petitioner filed Transfer Petition(s) (Criminal No.555/2021 before the Hon'ble Supreme Court of India and that was also dismissed, by order, dated 07-02-2022.

15.Another factor is that the learned counsel appearing for the petitioners issued a notice to the complainant company for appointing an Arbitrator. Having taken all these possible steps, it is not fair on the part of the petitioners to question the very cognizance of the offence itself. So, I find absolutely no merit in this criminal revision.

16.In the result, this criminal revision fails and the same is **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

06/01/2023

Index:Yes/No
Internet:Yes/No
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To,

The Judicial Magistrate No.IV,
Tiruchirappalli.



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G.ILANGOVAN, J

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Cr1.RC(MD)No.802 of 2022

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