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*Crl.O.P.Nos.26836, 26837, 26840, 26842,
26844, 26846, 26849 & 26852 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 27.03.2024
PRONOUNCED ON: 3.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.26836, 26837, 26840, 26842,
26844, 26846, 26849 & 26852 of 2023
in
Crl.A.SR.Nos.43320, 43324, 43309, 43302,
43316, 43318, 43294 & 43327 of 2023

Crl.O.P.No.26836 of 2024

Ajith S.Lulla

... Petitioner

Vs.

Francis Xavier Singhraj,
Managing Director,
M/s.Francis Kanoi Marketing Planning
Service (Pvt) Ltd.,
Office: No.J-85, 13th Main Road,
Anna Nagar West, Chennai – 600 040.
Residence: H-201, Metro Zone,
No.44, Pillaiyar Koil Street,
Off Jawaharlal Nehru Road,
Anna Nagar, Chennai – 600 040.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 378(4) of the Code of Criminal Procedure, to grant leave to file an appeal against the order of acquittal passed in S.T.C.No.47 of 2021 dated 26.05.2023 on the file of



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the Judicial Magistrate, Thiruvottiyur.

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For Petitioner
in all Crl.O.Ps : Ms.Mehek Asrani

For Respondent
in all Crl.O.Ps. : Mr.M.L.Joseph
for M/s.Chennai Law Associates

COMMON ORDER

The petitioner as a complainant filed private complaints for offence under Section 138 of the Negotiable Instruments Act, 1881 against the respondent in S.T.C.Nos.47/2021, 17/2021, 50/2021, 769/2021, 49/2021, 48/2021, 16/2021 and 42/2020 on the file of the learned Judicial Magistrate, Thiruvottiyur. The Trial Court by impugned order dated 26.05.2023 dismissed the complaint. Aggrieved over the same, the present leave petition and appeal filed.

2.The contention of the petitioner is that the petitioner/complainant who is doing money lending business had good terms with the respondent, who used to regularly borrow money from the petitioner for several years. M/s.Francis Kanoi Marketing Planning Services (Pvt.) Ltd., is a family



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Company managed and run by the respondent, his wife along with other Directors. The petitioner and the respondent had a running account and there were lending and repayment on a regular basis. After 2014-2015, the respondent failed to make timely repayments and the respondent was in the habit of postponing the payment. During the year 2019-2020, several letters exchanged between the petitioner and the respondent in his personal capacity as well as in the name of his Company and family members, but it was the respondent who was primarily communicating on behalf of others. Despite repeated requests, the respondent had not come forward to discharge the liability and hence, the postdated cheques issued by the respondent to recover the debt due were presented for encashment and the cheques were dishonoured. Hence, the petitioner filed complaints in S.T.C.Nos.47/2021, 17/2021, 50/2021, 49/2021, 48/2021, 16/2021 and 42/2020 against the respondent and in S.T.C.No.769 of 2021, the Company was also arrayed as accused along with the respondent. All the complaints were tried by the learned Judicial Magistrate, Thiruvottiyur and the same were dismissed. He would submit that the Trial Court failed to appreciate the issuance of cheques and signature in the cheques admitted by the respondent and hence,



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presumption under Sections 118 and 139 of Negotiable Instruments Act comes into play. The respondent failed to lead any evidence or enter the witness box to dislodge the statutory presumption, against him and probabilize his defence. No document was produced by the respondent in his defence to show that the liability envisaged in the cheque was discharged by him at any point of time.

3.The learned counsel further submitted that in this case, the Trial Court though recorded that power of attorney holder was earlier employed with the respondent but cross examination was with regard to his previous employment and no question whatsoever posted to the Power Agent about the transaction details, while he was employed with the respondent. Further, the decision referred by the learned Magistrate in the case of *A.C.Narayanan vs. State of Maharashtra* reported in (2014) 11 SCC 790, wherein it is held that the power agent file a complaint and on behalf of the complainant if he had witnessed the transaction as agent of the payee/holder in due course or possess due knowledge regarding the said transaction will qualify him as witness. Further, in this case joint trial of eight separate



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complaints conducted, it is settled position that when separate cognizance taken on eight cases, the learned Magistrate ought to have conducted separate trials and passing of judgment in all cases taking common evidence, vitiates the entire trial. The learned Magistrate erroneously conducted a joint trial on eight cases before him and failed to appreciate the cross examination of power agent in the light of the evidence adduced in all eight cases. P.W.1/power agent deposed only on 06.10.2022 in all eight cases and common order was passed in all eight cases on 26.05.2023. Except for change in details of cheque, date, etc., the respondent had not questioned the letters which have been marked as exhibits wherein the respondent admitted his liability and issuance of cheques. The respondent on behalf of his wife and Company viz., M/s.Francis Kanoi Marketing Planning Service (Pvt) Ltd. was the person interacting with the petitioner/complainant, hence the Trial Court ought to have seen that not making the Company as party is not fatal to the case of the complainant. The letter dated 05.02.2020 has been marked by the respondent during cross examination and relying heavily on that letter in dismissing the complaint is not proper. It is settled principle that cross examination is to be limited to



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the contents of proof affidavit and when there is no mention of letter dated 05.02.2020 in the proof affidavit, the question posed to the power agent on the said letter cannot be considered. In this case, the respondent neither examined any witness nor entered the box, gave explanation for the cheques issued and produced any documents in his support. Though eight cases tried together, the learned Magistrate failed to exercise power under Section 165 of the Indian Evidence Act. Hence, on these grounds prayed for setting aside the impugned order and prayed leave to be granted for filing an appeal.

4.In support of his contentions, the learned counsel for the petitioner relied upon the decisions for the principle that joint trial conducted clubbing of all the eight cases by common evidence and passing judgment on the same day is illegal, not permissible and it is permissible for the complainant to prosecute an offence under Section 138 of Negotiable Instruments Act through his power agent, which are as follows:

***1) Expeditious Trial of Cases under Section 138 of NI
Act, 1881, In re, (2021) 16 SCC 116 : 2021 SC Online
SC 325***



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- 2) ***Expeditious Trial of Cases under Section 138 of NI Act, 1881, In re, (2021) 16 SCC 116 : 2021 SCC Online SC 325 : (2021) 2 CRIMES 153 : (2021) 2 GUJ LH 381***
- 3) ***Agate Finance Limited vs. L.S.P. Agro Limited*** reported in ***2011 SCC Online Mad 416***
- 4) ***Thangavelu vs. Palanisamy*** reported in ***1996 SCC Online Mad 560***
- 5) ***Mohammed Kasim vs. K.Rayappan*** reported in ***2015 SCC Online Mad 560***
- 6) ***A.C.Narayanan vs. State of Maharashtra*** reported in ***(2014) 11 SCC 790***
- 7) ***Rohitbhai Jivanlal Patel vs. State of Gujarat*** reported in ***(2019) 18 SCC 106***
- 8) ***Jhantu Mahapatra vs. Nirnanjan Deb and others*** reported in ***2023 SCC Online Cal 2298***
- 9) ***Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel*** reported in ***(2023) 1 SCC 578***

5.The learned counsel for the respondent submitted that P.W.1 was cross examined in detail, put forth his defence that the entire loan amounts are repaid and there is no balance due owed by him. Despite the respondent seeking details of payment and repayment, the petitioner not come forward



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to give details. The cheques which were issued to the petitioner's mother

misused by the petitioner which is substantiated in the cross examination.

P.W.1 admits that he has no personal knowledge about the transaction

between the petitioner and the respondent. He further admits that the

Company M/s.Francis Kanoi Marketing Planning Service (Pvt) Ltd. not

arrayed as accused in the cases except in S.T.C.No.769 of 2021, hence the

case against the Directors without adding the Company as a party, the

Directors cannot be prosecuted and complaint is bad in law, and liable to be

dismissed. The respondent raised a probable defence and rebutted the

statutory presumption. He further submitted that it is not mere denial of the

averments but the presumption has been rebutted by way of cross

examination referring to the documents produced by the petitioner.

P.W.1/Power Agent admits that though in the proof affidavit it is averred

that he had knowledge about the cases but in cross examination, he admits

that he had no personal knowledge of the transaction between the petitioner

and the respondent. He would further submit that the petitioner in support of

his contention relied upon *A.C.Narayanan's* case wherein it is held that

though a complaint can be prosecuted by Power Agent, he should possess



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personal knowledge about the transaction but in this case the Power

Agent/P.W.1 admits having no knowledge about the transaction.

Admittedly, the transaction was between the year 2015-2016 but P.W.1

admits that he joined the office of the petitioner only during June 2019. In

all these cases, except in one case i.e., S.T.C.No.769 of 2021, the Company

not arrayed as accused which is in clear violation of the dictum laid down by

the Apex Court in the case of *Aneeta Hada vs. Godfather Travels & Tours*

Pvt. Ltd., reported in (2012) 5 SCC 661. He further submit that all the

cheques issued in the name of M/s.Francis Kanoi Marketing Planning

Services (Pvt.) Ltd., and not in the individual capacity of the respondent,

hence the Director or the Office bearers cannot be prosecuted in the absence

of Company. Further, Section 141 of Negotiable Instruments Act is very

clear that without arraying the Company or the firm, the Partners, Directors

and Office bearers cannot be prosecuted. In this case, the Company is not

arrayed as a party and in view of the same, the respondent cannot be

vicariously held liable. In support of his contention, the learned counsel

relied upon the decision of the Apex Court in the case of *Pawan Kumar*

Goel vs. State of Uttar Pradesh and another reported in 2022 Livelaw (SC)



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971 wherein the above principles are reiterated. Hence, prayed for dismissal.

6.Considering the submissions made and on perusal of the materials, it is seen that the admitted case is that cheques have been issued in the name of M/s.Francis Kanoi Marketing Planning Services (Pvt.) Ltd. and the complaint lodged only against the respondent in his individual capacity and the Company is not arrayed as party in this case. The Apex Court in the case of *Aneeta Hada vs. Godfather Travels and Tours Pvt. Ltd* reported in *(2012) 5 SCC 661* and *S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalia and another* reported in *(2005) 8 SCC 89*, clearly held that without arraying the Company as party to the case, the Director, Office bearers, etc. cannot be prosecuted. As regards the complaint in S.T.C.No.769 of 2021, the Apex Court in *A.C.Narayanan's* case held that complaints can be prosecuted by the Power Agent of the complainant provided he has personal knowledge of the transaction between the petitioner and the respondent. In this case, the Power Agent admits that he joined the complainant's Company only during June 2019. The admitted case of the petitioner/complainant is that the



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transaction between the petitioner and the respondent is during 2015-2016, P.W.1 during cross examination admits that he has no personal knowledge about the transaction between the petitioner and the respondent. Once the petitioner coming to know about such an answer given, it would have been prudent for the petitioner to get into the box and depose about the transaction but he failed to do so and now after the judgment, filing a petition seeking to set aside the judgment and to have a fresh trial and the principal to get into the box and depose cannot be permitted in view of the fact that offence under Section 138 of Negotiable Instruments Act being technical in nature. Further, the Apex Court in the case of *N.Harihara Krishnan vs. J.Thomas* reported in **(2018) 13 SCC 663** highlighted the limitation prescribed for taking cognizance under Section 142 of Negotiable Instruments Act. In this case, the limitation period already expired and hence, the clock cannot be set back. On perusal of materials filed, it is seen there is no joint trial as contended by the petitioner. All the cases have been posted on the same day but separate trial conducted, evidence recorded separately and judgment passed independently in each case. In view of the above, this Court finds no reason to interfere with the impugned order passed by the Trial Court.



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7. Therefore, this Court does not find any merits in this Criminal Original Petitions to grant leave. Accordingly, these Criminal Original Petitions stand dismissed and Crl.A.SR.Nos.43320, 43324, 43309, 43302, 43316, 43318, 43294 and 43327 of 2023 stand rejected.

3.09.2024

Index: Yes/No
Speaking Order/Non-Speaking Order,
Neutral Citation: Yes/No
cse

To

The Judicial Magistrate,
Thiruvottiyur.

M.NIRMAL KUMAR, J.

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Pre-delivery order made in

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