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Crl.RC.Nos.2184, 2187, 2191, 2192 & 2201 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.06.2024

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

Crl.RC.Nos.2184, 2187, 2191, 2192 & 2201 of 2023

and

Crl.M.P.Nos.19724, 19730, 19754, 19756 & 19807 of 2023

R.J.Surendranath
Harsh Kapoor

...Petitioner in Crl.R.C.2184 of 2023
...Petitioner in Crl.R.C.2187 of 2023

1. M/s.H.N.S. Chits Private Limited,
Rep. by its Director,
Surendranath,
No.159, Peters Road,
Gopalapuram, Chennai – 600 086.

2. R.J.Surendranath
3. Anitha Kapoor

...Petitioners in Crl.R.C.Nos.2191, 2192
& 2201 of 2023

Vs.

Rakesh Harlalka
Rep.by his Power agent
Rajesh Kumar Agarwal

...Respondent in Crl.RC.Nos.2184, 2187 &
2191 of 2023

Usha Tiberwala
Rep.by his Power agent
Rajesh Kumar Agarwal

...Respondent in Crl.RC.No.2192 of 2023

Narendra Harlalka



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Rep.by his Power agent
Rajesh Kumar Agarwal

...Respondent in Crl.RC.No.2201 of 2023

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Petitions filed under Section 397 r/w 401 of Code of Criminal Procedure to set aside the orders passed by the learned Metropolitan Magistrate No.II Fast Track Court, Chennai in Crl.M.P.Nos.35489, 35490, 35327, 35334 & 35329 of 2023 dated 18.10.2023.

In all R.C.s

For Petitioners : Mr.S.Suresh

For Respondent : Mr.M.Santhanaraman

COMMON ORDER

Since the issue involved in the present cases are one and the same they are disposed of by way of this common order.

2. The petitioners are accused in C.C.Nos.2113, 2115, 2117, 2109 & 2111 of 2021 before the learned Metropolitan Magistrate No.II, Fast Track Court, Allikulam, Chennai. The respondents appointed one Mr.Rajesh Kumar Agarwal as Special Power of Attorney to prosecute all the five cases. In C.C.Nos.2113 and 2115 of 2021, the respondents filed a complaint in the individual name projecting that for the investments made in the business and in repayment of the same, the petitioners issued a cheque and when it was



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presented for encashment, the same got dishonoured. As regards the other three cases in C.C.Nos.2117 , 2109 & 2111 of 2021, it was projected that cheques were issued by H.N.S.Chits Private Limited to the successful bidders and the same got dishonoured. Aggrieved over the same, the respondents in respective petitions filed complaints against the respective petitioners u/s.200 Cr.P.C. which is pending on the file of learned Metropolitan Magistrate No.II, FTC, Chennai. Seeking to examine the original complainant and for production of documents the petitioners in respective petitions have filed petitions u/s.254 of Cr.P.C. before the trial Court, however, the said petitions were dismissed on the ground that the reasons stated by the respective petitioners are not acceptable. Challenging the same, the petitioners have filed these Criminal Revision Petitions.

3. The learned counsel appearing for the petitioners submitted that a complaint has been lodged against the petitioners u/s.200 of Cr.P.C. by the power agent of the respondents for the offence u/s.138 of Negotiable Instruments Act, 1881. During the time of cross examination which was conducted by the learned counsel for the respective petitioners, the power



agent though claims himself to be having full knowledge about the case in the sworn statement has deposed that he has no knowledge about the police complaint lodged by his Principals, stage of the case and filing of the final report. In the cross examination, it has been stated that he has not produced any documents in that regard and also that he is not a competent witness to depose. When such being so, this Court in the case of ***A.C.Narayanan vs. State of Maharashtra & Anr. reported in 2014 11 SCC 790*** has categorically held that when a power holder has no knowledge about the transaction, he cannot be examined and the complainant has to be necessarily called and examined before the Court. The relevant portion of the said order is extracted hereunder:

“23. In the light of the discussion, we are of the view that the power of attorney holder may be allowed to file, appear and depose for the purpose of issue of process for the offence punishable under Section 138 of the N.I.Act. An exception to the above is when the power of attorney holder of the complainant does not have a personal knowledge about the transactions then he cannot be examined.”

4. He further submits that the petitioners are ready to furnish the



aforesaid case documents if anything required by the trial court during the examination of complainants. Accordingly, he prayed to allow these revisions.

5. The learned counsel appearing for the respective respondents submitted that the complainants in C.C.Nos.2113, 2115, 2117 and 2109 of 2021 are ready to appear before the trial Court for examination and insofar as the complainant in C.C.No.2111 of 2021 is concerned, she is bed ridden and she may not be able to appear before the trial Court.

6. Heard the learned counsel appearing for the petitioners and the respondents and perused the materials placed on record.

7. In the light of the stand taken by the learned counsel for the respondents, the impugned order is modified and this Court directs the complainants in C.C.Nos.2113, 2115, 2117 and 2109 of 2021 to appear before trial Court on the next date of hearing. As the complainant in C.C.No.2111 of 2021 is bed ridden, the trial Court is directed to appoint an



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Advocate Commissioner in whose presence the petitioners shall cross examine the said complainant and the said deposition shall be produced before the trial Court for passing appropriate orders. After examination of the witnesses, the trial Court after affording an opportunity of hearing to the parties is directed to dispose of the complaints filed by the petitioners upon the materials placed before it within a period of three (3) months from the date of receipt of a copy of this order.

8. With the above direction, these Criminal Revision petitions are disposed of. Consequently, connected miscellaneous petitions are closed.

24.06.2024

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

To

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Metropolitan Magistrate No.II Fast Track Court, Chennai

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M.DHANDAPANI, J.



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