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Crl.O.P.(MD)No.16622 and 16650 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 14/12/2023

Date of Pronounced : 28/02/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

Crl.OP(MD)Nos.16622 and 16650 of 2023

and

Crl.MP(MD)Nos.13227, 13260, 13262, 15392 and 15477 of 2023

(1)Crl.OP(MD)No.16622 of 2023:-

1.Bullydyers Integrated Solution
Private Limited,
Rep. by Srinath Reddy

2.Srinath Reddy : Petitioners/A1 and A2

Vs.

M/s.Jeyavairava Engineering Company Ltd.,
represented by its Managing Director
K.Arun Balaji : Respondent/De-facto
Complainant

PRAYER:-Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in STC No.207 of 2022 on the file of the Fast Track Court-II, (JM Level), Madurai and qush the same and pass such further or other orders.

For Petitioners : Mr.R.Vivekananthan

For Respondent : Mr.Niranjan S Kumar



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(2)CrI.OP(MD)No.16650 of 2023:-

1.Bullydyers Integrated Solution
Private Limited,
Rep. by Srinath Reddy

2.Srinath Reddy
Authorised Signatory,
Bullydyers Integrated Solution
Private Limited. : Petitioners/A1 and A2

Vs.

M/s.Jeyavairava Engineering Company Ltd.,
represented by its Managing Director
K.Arun Balaji : Respondent/De-facto
Complainant

PRAYER:-Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in STC No.687 of 2022 on the file of the Fast Track Court-II, (JM Level), Madurai and quash the same and pass such further or other orders.

For Petitioners : Mr.R.Vivekananthan

For Respondent : Mr.Niranjana S Kumar

COMMON ORDER

These criminal original petitions have been filed seeking quashment of the STC No.207 of 2023 and 687 of 2022 on the file of the Fast Track Court-II, (JM Level), Madurai.



2. The facts in brief:-

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The case in STC No.207 of 2023 was filed by the respondent herein before the Fast Track Court No.II at Judicial Magisterial Level, Madurai with the following averments:-

The accused 2 and 3 along with the Director of the Company approached them for financial support to develop their business activities. The amount was given on various dates from 12/11/2020. The amount was brought to the account of the A1's company. Out of the above said total amount, only Rs.93,28,200/- was repaid. The balance amount is Rs.2,21,02,000/-. Towards repayment of the amount, they issued a cheque bearing No.045525 for Rs.70,00,000/- and the cheque bearing No.045526 for a sum of Rs.1,01,52,000/-, on 13/05/2022. These cheques were jointly issued by A2 and A3 as the authorised signatory of the A1's company. Now the third cheque bearing No.355897 was issued for a sum of Rs.49,50,000/- drawn on SBI, K.K.Nagar Branch, Chennai. The cheque No. 045526 was presented for collection, on 25/06/2022 for the value of Rs.1,01,52,000/- before the Tamil Nadu Mercantile Bank, Sayalkudi branch. But it was returned stating that the accounts were blocked, on 30/05/2022.



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Similarly, the cheque bearing No.045525 for a sum of Rs. 70,00,000/- was presented for payment on 13/05/2022. It was also came to be returned as Account blocked, on 17/05/2022. The third cheque bearing No.355897 for a sum of Rs.49,50,000/- was also presented for payment, on 13/05/2022. It came to be returned on 19/05/2022. After completing the statutory formalities, they filed the private complaint.

In respect of STC No.687 of 2022, the cheque is bearing No.045526, the amount is also mentioned as Rs.1,01,52,000/-. It was presented for collection, on 27/05/2022. Return was on 30/05/2022 as 'Account Blocked'. After completing the statutory formalities, they filed the present complaint.

3. Seeking quashment of the same, these two separate petitions are filed by the accused on the ground that the cheque numbers and the cheque amount are not properly mentioned in the complaint; For a single cheque amount, two cases have been registered; Filing of different complaints for the very same cause of action does not arise at all; It is a clear violation of the Articles 20(2) of the Constitution of India.



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4.Heard both sides.

5.The learned counsel appearing for the petitioners would submit that since the cause of action for both the complaints are one and the same, single notice was issued by the complainant. But however, three complaints were filed.

6.Another contention is that the complaints have been filed before the court, which does not have jurisdiction; Since the accused were outside the jurisdiction, the trial court ought to have undertaken the enquiry under section 202 of Cr.P.C. For that purpose, he would rely upon the judgment of the Hon'ble Supreme court reported in ***Expeditious Trial of cases Under section 138 of NI Act, 1991 in Re (Sumo Motu Writ Petition (Crl.)No.2 of 2020, decided on April 16, 2021)***.

7.Per contra, the learned counsel appearing for the respondent would submit that when the issuance of the cheques are not disputed, then automatically presumption will come into operation. So, quashment of the proceedings by exercising the power under section 482 of Cr.P.C will not lie. For that purpose, he would rely upon the decision of the Hon'ble Supreme Court in ***Rathish Babu***



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Unnikrishnan Vs. The State (Govt. of NCT of Delhi) and another (Criminal Appeal Nos.694-695 of 2022, dated 26/04/2022) .

8.No doubt that issuance of the cheque is not disputed by the petitioners herein. But this petition filed on the point of jurisdiction of the trial court.

9.Now we will examine whether the trial court lacks jurisdiction even to try the offence. The accused are the resident of Chennai and the complainant is the resident of Kamuthi, Ramanathapuram District.

10.It is stated that both are not having the territorial jurisdiction of the trial court.

11.Now we will go to the complaint with regard to the jurisdiction point. Para 7 of the complaint in STC No.687 of 2022 reads as under:-

"7.The complainant submits that the cheque in question was issued by the accused was drawn on ICICI Bank, K.K.Nagar Branch, Chennai and the cheque was presented for collection by the complainant in his account maintained in the name of the company



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with Tamiladu Mercantile Bank, Villapuram branch is situated and lies within the jurisdiction of Avaniyapuram Police Station limits as such this Hon'ble Court alone having territorial jurisdiction to entertain this complaint."

12. So it is seen that through the Bank of the complainant, through which the cheque was presented for collection. Naturally the court namely the Special Court got jurisdiction.

13. Similarly, the complainant in STC No.207 of 2002, it is stated in para 7 as follows:-

"7. I submits that the cheque in question was issued by the accused was drawn on ICICI Bank, K.K.Nagar Branch, Chennai and the cheque was presented for collection by the complainant in his account maintained in his individual name with Tamilnadu Mercantile Bank, Sayalkudi branch, Ramanathapuram district is situated and lies within the jurisdiction of Sayalkudi Police Station limits as such this Hon'ble Court alone having territorial jurisdiction to entertain this complaint."



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14. So *prima facie*, it is seen that the trial court has got jurisdiction to entertain both the complaints.

15. Now we will see the argument raised by the petitioner.

16. There is no bar that even in respect of the single or same cause of action, only one complaint will lie. Transaction may be single, but the cause of action for initiation of the proceedings under section 138 of the Negotiable Instruments Act will be different. Since the cheques were issued for different amount, naturally the cause of action for initiation of the proceedings under section 138 of the Negotiable Instruments Act will be different. So, it is the contention on the part of the petitioners that three different complaints will not lie is not acceptable. So, that contention is rejected.

17. So far as the second contention is that the Hon'ble Supreme Court in ***Expeditious Trial of cases Under section 138 of NI Act, 1991 in Re (Sumo Motu Writ Petition (Crl.) No.2 of 2020, decided on April 16, 2021)*** has held in para 10 and 11 as follows:-



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"10. Section 202 of the Code confers jurisdiction on the Magistrate to conduct an inquiry for the purpose of deciding whether sufficient grounds justifying the issue of process are made out. The amendment to Section 202 of the Code with effect from 23-06-2026, vide Act 25 of 2005, made it mandatory for the Magistrate to conduct an inquiry before issue of process, in a case where the accused resides beyond the area of jurisdiction of the court. (See: Vijay Dhanuka Vs. Najima Mamta [(2014) 14 SCC 638], Abhijit Pawar Vs. Hemani Madhukar Nimbalkar [(2017) 3 SCC 528] and Birla Corpn. Ltd., Vs. Advantz Investments & Holdings Ltd., [(2019) 16 SCC 610]. There has been a divergence of opinion amongst the High Courts relating to the applicability of Section 202 in respect of the complaints filed under Section 138 of the Act. Certain cases under Section 138 have been decided by the High Courts upholding the view that it is mandatory for the Magistrate to conduct an inquiry, as provided in Section 202 of the Code, before issuance of process in complaints filed under Section 138. Contrary views have been expressed in some other cases. It has been held that merely because the accused is residing outside the jurisdiction of the court, it is not



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necessary for the Magistrate to postpone the iciness of process in each and every case. Further, it has also been held that not conducting inquiry under Section 202 of the Code would not vitiate the issuance of process, if requisite satisfaction can be obtained from the materials available on record.

11.The learned Amici-Curiae referred to a judgment of this Court in K.S.Joseph Vs. Philips Carbon Black Ltd., [(2016)11 SCC 105] where there was a discussion about the requirement of inquiry under Section 202 of the Code in relation to complaints filed under Section 138 but the question of law was left open. In view of the judgments of this Court in Vijay Dhanuka [(2014)14 SCC 638], Abhijit Pawar [(2017)3 SCC 528]and Birla Corp. [(2019)16 SCC 610], the inquiry to be held by the Magistrate before issuance of summons to the accused residing outside the jurisdiction of the court cannot be dispensed with. The learned Amici Curiae recommended that the Magistrate should come to a conclusion after holding an inquiry that there are sufficient grounds to proceed against the accused. We are in agreement with the learned Amici Curiae."



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18. So it is seen that when the accused are residing outside the jurisdiction of the Court, inquiry by the Magistrate is required. Here, the learned counsel appearing for the petitioners would submit that absolutely no inquiry was undertaken.

19. With reference to the jurisdiction, it is well settled that the Court in whose jurisdiction, the drawee Bank is situated can entertain the complaint. So the ground that has been raised by the petitioners is not available and the complaint must be decided on its own merits to its logical conclusion.

20. Online status of the complaint is also produced by the complainant stating that at the time of cross examination, these two petitions are filed. STC No.206 of 2023, that was originally filed before the Judicial Magistrate No.1, Kamuthi. As per the order of this court, now it has been transferred to the Judicial Magistrate FTC No.II, Madurai. So far as STC No.207 of 2020 is concerned, now it is pending for service of summons.

21. We can take another angle also that cognizance has been taken by the Magistrate without conducting inquiry under section 202 of Cr.P.C before issuing the summons.



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22. So the question, which arises for consideration is whether on that account, the trial is vitiated.

23. We can look into section 460 of the Cr.P.C to answer this point.

24. Section 460(e) of Cr.P.C reads as under:-

"460. Irregularities which do not vitiate proceedings. - If any Magistrate not empowered by law to do any of the following things, namely. -

- (a)
- (b)
- [c]
- (d)

(e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of section 190:"

25. Section 461(k) of Cr.P.C reads as under:-

"461. Irregularities which vitiate proceedings. - If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely, -

- (a)



- (b)
- [c]
- (d)
- (e)
- (f)
- (g)
- (h)
- (i)
- (j)

(k) takes cognizance of an offence under clause © of sub-section (1) of section 190."

25. In the light of the above two provisions, we will return back to section 190 of Cr.P.C, which runs like this:-

"190. Cognizance of offence by Magistrate.-(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence--

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.



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(2)The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within the competence to inquire into or try."

26.Combined reading of sections 460(e), 461(k) and 190 of Cr.P.C will clarify the position that the proceedings will be vitiated only in respect of offences mentioned under section 190(c) of Cr.P.C. In respect of the offence, on the basis of the complaint under sections 190(a) and (b), the proceedings will not be vitiated. On that account also, the contention raised by the petitioners cannot be taken into account for exercising the power under section 482 of Cr.P.C.

27.In view of the above facts, I find absolutely no reason to entertain these petitions.

28.In the result, both criminal original petitions are **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

28/02/2024

Index:Yes/No
Internet:Yes/No

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To,

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The Fast Track-II (JM Level)
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G.ILANGOVAN, J

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