Supreme Court of India M/S M. M. T. C. Ltd. & Anr vs M/S Medchl Chemicals & Pharma P. ... on 19 November, 2001 Author: S N Variava Bench: K.T.Thomas, S.N.Variava CASE NO.: Appeal (crl.) 1173-1174 of 2001 Special Leave Petition (crl.) 289-290 of 2000

PETITIONER: M/S M. M. T. C. LTD. & ANR.

Vs.

RESPONDENT: M/S MEDCHL CHEMICALS & PHARMA P. LTD. & ANR.

DATE OF JUDGMENT: 19/11/2001

BENCH: K.T.Thomas, S.N.Variava

JUDGMENT: S. N. VARIAVA, J. Leave granted. Heard parties. These Appeals are against a Judgment dated 18th December, 1998. By this common Judgment two complaints, filed by the appellants, under Section 138 of the Negotiable Instruments Act have been quashed. The appellant is a Government of India Company, incorporated under the Companies Act. The appellant has a Regional Office at Chennai. The 1st respondent is also a Company. The 2nd and 3rd respondents were/are the Directors of the 1st respondent Company. It is stated that 2nd respondent has now died. The appellant and the 1st respondent entered into a Memorandum of Understanding dated 1st June, 1994. This Memorandum of Understanding was slightly altered on 19th September, 1994. Pursuant to the Memorandum of Understanding two cheques, one dated 31st October, 1994 in a sum of Rs. 20,26,995/- and another dated 10th November, 1994 in a sum of Rs. 22,10,156/-, were issued by the 1st respondent in favour of the appellant. Both the cheques when presented for payment were returned with the endorsement "payment stopped by drawer". Two notices were served by the appellant on the 1st respondent. As the amounts under the cheques were not paid the appellants lodged two complaints through one Lakshman Goel, the Manager of the Regional Office of the appellant. Respondents filed two petitions for quashing of the complaints. By the impugned order both the complaints have been quashed. At this stage it must be mentioned that respondents had also issued, to the appellants, four other cheques. Those cheques were also dishonoured when presented for payment. Four other complaints, under Section 138 of the Negotiable Instruments Act, had also been filed by the appellants. Those four complaints had also been lodged by the same Shri Lakshman Goel. In those four cases the respondents filed separate applications for discharge. Those discharge applications were on identical grounds as urged by the respondents in the two petitions for quashing the complaints. The Magistrate accepted the contention and discharged the respondents. The High Court allowed the Revision filed by the appellants and set aside the Order of discharge. The High Court held, as between the same parties, that the Magistrate had erred in holding that the complaints filed by Lakshman Goel were not maintainable. The High Court held that, at this stage, it was not possible to accept defence that complainant/appellants were not entitled to present the cheques as respondents had expected the goods. The High Court restored the four complaints and

directed the Magistrate to proceed with the trial in accordance with law. The respondents filed SLPs before this Court which were summarily dismissed. In this case the respondents have taken identical contentions in their petitions to quash the complaints viz. that the complaints filed by Mr. Lakshman Goel were not maintainable and that the cheques were not given for any debt or liability. It was pointed out to the learned Judge that, between the same parties and on identical facts, it had already been held that as case for discharge was made out. Yet the learned Judge chose to ignore those findings and proceeded to hold to the contrary. In the impugned Judgment it has been held that the complaints filed by Mr. Lakshman Goel were not maintainable. It was noticed that in those two complaints, at a subsequent stage, one Mr. Sampath Kumar, the Deputy General Manager of the appellant was allowed to represent the appellants. The High Court held that it is only an Executive Director of the Company who has the authority to institute legal proceedings. It is held that the complaint could only be filed by a person who is in charge of or was responsible to the Company. It is held that authorisation must be on the date when the complaint is filed and a subsequent authorisation does not validate the complaint. It is held that the absence of a complaint by a duly delegated authority is not a mere defect or irregularity which could be cured subsequently. It is held that if the record does disclose any authorisation, then taking cognizance of the complaint was barred by Section 142(a) of the Negotiable Instruments Act. It has been held that Senior Manager (who had lodged the complaints) and the Deputy General Manager (who was substituted) had not been authorised by the Board of Directors to sign and file the complaint on behalf of the Company or to prosecute the same. It is held that the Manager or the Deputy General Manager were mere paid employees of the Company. It is then held as follows: "Therefore, it is clear that the legal position as crystallised by the rulings is to the effect that a complaint under Section 138 of the Negotiable Instruments Act can be filed for and on behalf of a Body such as Corporation, who has only artificial existence through a particular mode and when that mode is not followed, any proceedings initiated or any complaint filed will be vitiated from its very inception. In my opinion, here, the complaint is signed and presented by a person, who is neither an authorised agent nor a person empowered under the articles of Association or by any resolution of the Board to do so. Hence, the complaint is not maintainable. The taking cognizance of such a complaint is legally not acceptable. Hence, these two complaints filed for and on behalf of MMTC Limited against the Petitioners herein, which were taken on file in C. C. Nos. 3324 of 1995 and 3325 of 1995 are not maintainable at all and that cognizance of the said complaints ought not to have been taken by the Magistrate." In our view the reasoning given above cannot be sustained. Section 142 of the Negotiable Instruments Act provides that a complaint under Section 138 can be made by the payee or the holder in due course of the said cheque. The two complaints, in question, are by the appellant Company who is the payee of the two cheques. This Court has, as far back as, in the case of Vishwa Mitter v. O. P. Poddar reported in (1983) 4 SCC 701, held that it is clear that anyone can set the criminal law in motion by filing a complaint of facts constituting an

offence before a Magistrate entitled to take cognizance. It has been held that no court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. It has been held that if any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, then the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute. In the present case, the only eligibility criteria prescribed by Section 142 is that the complaint must be by the payee or the holder in due course. This criteria is satisfied as the complaint is in the name and on behalf of the appellant Company. In the case of Associated Cement Co. Ltd. v. Keshvanand reported in (1998) 1 SCC 687, it has been held by this Court that the complainant has to be a corporeal person who is capable of making a physical appearance in the court. It has been held that if a complaint is made in the name of a incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the court. It is held that the court looks upon the natural person to be the complainant for all practical purposes. It is held that when the complainant is a body corporate it is the de jure complainant, and it must necessarily associate a human being as de facto complaint to represent the former in court proceedings. It has further been held that no Magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. It has been held that there may be occasions when different persons can represent the company. It has been held that it is open to the de jure complainant company to seek permission of the court for sending any other person to represent the company in the court. Thus, even presuming, that initially there was no authority, still the Company can, at any stage, rectify that defect. At a subsequent stage the Company can send a person who is competent to represent the company. The complaints could thus not have been quashed on this ground. The learned Judge has next gone into facts and arrived at a conclusion that the cheques were issued as security and not for any debt or liability existing on the date they were issued. In so doing the learned Judge has ignored well settled law that the power of quashing criminal proceedings should be exercised very stringently and with circumspection. It is settled law that at this stage the Court is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. At this stage the Court could not have gone into merits and/or come to a conclusion that there was no existing debt or liability. It is next held as follows: "This is a special provision incorporated in the Negotiable Instrument Act. It is necessary to allege specifically in the complaint that there was a subsisting liability and an enforceable debt and to discharge the same, the cheques were issued. But, we do not find any such allegation at all. The absence of such vital allegation, considerably impairs the maintainability." In the case of Maruti Udyog Ltd. v. Narender reported in (1999) 1 SCC 113, this Court has held that, by virtue of Section 139 of the Negotiable Instruments Act, the Court has to draw a presumption that the

holder of the cheque received the cheque for discharge of a debt or liability until the contrary is proved. This Court has held that at the initial stage of the proceedings the High Court was not justified in entertaining and accepting a plea that there was no debt or liability and thereby quashing the complaint. A similar view has been taken by this Court in the case of K. N. Beena v. Muniyappan reported in 2001 (7) SCALE 331, wherein again it has been held that under Section 139 of the Negotiable Instruments Act the Court has to presume, in a complaint under Section 138, that the cheque had been issued for a debt or liability. There is therefore no requirement that the Complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability was on the respondents. This they have to discharge in the trial. At this stage, merely on basis of averments in the Petitions filed by them the High Court could not have concluded that there was no existing debt or liability. Lastly it was submitted that a complaint under Section 138 could only be maintained if the cheque was dishonoured for reason of funds being insufficient to honour the cheque or if the amount of the cheque exceeds the amount in the account. It is submitted that as payment of the cheques had been stopped by the drawer one of the ingredients of Section 138 was not fulfilled and thus the complaints were not maintainable. Just such a contention has been negatived by this Court has, in the case of Modi Cements Ltd. v. Kuchil Kumar Nandi reported in (1998) 3 SCC 249. It has been held that even though the cheque is dishonoured by reason of 'stop payment' instruction an offence under Section 138 could still be made out. It is held that the presumption under Section 139 is attracted in such a case also. The authority shows that even when the cheuqe is dishonoured by reason of stop payment instructions by virtue of Section 139 the Court has to presume that the cheque was received by the holder for the discharge, in whole or in part, of any debt or liability. Of course this is a rebuttable presumption. The accused can thus show that the "stop payment" instructions were not issued because of insufficiency or paucity of funds. If the accused shows that in his account there was sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the drawer bank and that the stop payment notice had been issued because of other valid causes including that there was no existing debt or liability at the time of presentation of cheque for encashment, then an offence under Section 138 would not be made out. The important thing is that the burden of so proving would be on the accused. Thus a Court cannot quash a complaint on this ground. In this view of the matter, the impugned Judgment cannot be sustained and is set aside. The learned VII Metropolitan Magistrate, G.T. Chennai is directed to proceed with the complaints against respondents 1 and 3 in accordance with law. It is made clear that the setting aside of the impugned Order will not tantamount to preventing the respondents from taking, at the trial, please available to them including those taken herein. The Appeals stand disposed of accordingly. There will be no order as to costs.