IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

CRL.A.No. 704 of 2012 ( )

AGAINST THE ORDER IN CC 489/2009 of CHIEF JUDICIAL MAGISTRATE, ALAPPUZHA DATED 25-02-2011

AGAINST THE ORDER IN Crl.L.P. 535/2011 of HIGH COURT OF KERALA DATED 08-07-2011

APPELLANT/COMPLAINANT:

MUTHOOT VEHICLE & ASSET FINANCE LTD
MUTHOOT CHAMBERS, 2nd FLOOR, KURIAN TOWERS
BANERJI ROAD, ERNAKULAM NOW RENAMED AS
MUTHOOT VEHICLE AND ASSET FINANCE LIMITED
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER
MRS.BABY SUJATHA, AGED 30 YEARS
D/o.VALSAN, CUSTOMS COLONY
POONITHURA, ERNAKULAM

BY ADV. SRI.SABU S.KALLARAMOOLA

RESPONDENT/ACCUSED:

1. SIYAD V.S.
MADATHIL PARAMBIL
NAYARAMBALAM, NOW RESIDING AT
KUNNEL HOSEM MURUKKUMPADAM
AZHEEKKAL, KOCHI 682570

2. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 682031

R1 BY ADV. SRI.P.KRISHNA KUMAR (ALAPPUZHA)
R1 BY ADV. SRI.R.SURAJ KUMAR
R2 BY PUBLIC PROSECUTOR: SMT.M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.704 of 2012

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Dated this the 01st day of December, 2015

JUDGMENT

The complainant is the appellant herein. Complainant company laid a proceeding under Section 138 of the Negotiable Instruments Act on the strength of a dishonoured cheque for a sum of Rs.96,900/- The complaint was laid through the power of attorney of the Managing Director. When the matter came up for evidence, C.M.P.No.4207 of 2010 was filed to accept another power of attorney executed in favour of that person on behalf of the Managing Director. Court below dismissed the complaint and acquitted the accused for the reasons stated in the order dated 25.02.2011. This is under challenge in this appeal.

2. Heard both sides and examined the records.

3. It is admitted that the complaint was filed through the power of attorney of the Managing Director. Thereafter, he is said to have executed another power of attorney holder. He filed an application along with a copy of the power of attorney that was subsequently executed. The court below held the view that there was no document or affidavit of the Managing Director showing that the earlier power of attorney was cancelled or simultaneously

permitted both of them. It seems to be a faulty conclusion since essentially when the new power of attorney is executed with respect to the same subject matter, it is only to be presumed that the earlier one has been explicitly or impliedly revoked. Even otherwise, it was a question of fact. Next reasoning of the court below was that though the power of attorney was produced, the resolution of the company authorizing the Managing Director to sub-delegate the power by execution of another power of attorney was also not established. This finding prime facie is also not sustainable. Company, being a corporate personality, though has an independent existence has to act through its officers. If the memorandum of association of the company authorizes the Managing Director to act on its behalf, it cannot be treated as a case of delegation of power to the Managing Director and consequently, the authorization given by the Managing Director to the power of attorney cannot be deemed as a case of sub-delegation. Even otherwise, question whether there was a case of sub-delegation is a question of fact and not a pure question of law to be decided at the threshold. Court below has held that the documents in relation to the resolution of the company has also not been produced as evidenced under Section 194 of the Companies Act. It is not clear as to whether the extract of the resolution has been produced or not. The impugned order itself indicate that the memorandum or articles of association of the company was not produced. Learned counsel for the appellant sought some time to produce the necessary documents to establish his case.

4. Having regard to the fact that the complaint was of the year 2009 and that the complainant was prosecuting it till 2011 and it also filed even the application to bring on record the new power of attorney, it cannot straight away be held that the complainant is guilty of negligence or latches. Having regard to those facts, I feel that a reasonable opportunity is liable to be granted to the complainant to prosecute his matter and to produce whatever documents which the company deemed fit and proper to produce.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remanded to the court below to enable the complainant to produce all those documents, which they deem fit and proper and the Court shall proceed to take evidence and decide on any issue as mentioned earlier. Both sides shall appear before the court below on 12.01.2016.

Sd/- **SUNIL THOMAS, Judge**

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True Copy / P.A to Judge