

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

CRL.A.No. 1262 of 2011 ()

AGAINST THE ORDER IN CC 637/2009 of CHIEF JUDICIAL MAGISTRATE,
ALAPPUZHA DATED 16-03-2011

AGAINST THE ORDER IN Cr1.L.P. 525/2011 of HIGH COURT OF KERALA DATED
30-06-2011

APPELLANT/PETITIONER:

MUTHOOT VEHICLE AND ASSET FINANCE LTD.
MUTHOOT CHAMBERS, 2ND FLOOR, KURIAN TOWERS
BANERJI ROAD, ERNAKULAM
(FORMERLY KNOWN AS MOTHOOT LEASING
AND FIANANCE LTD) REP.BY ITS POWER OF ATTORNEY
HOLDER MISS.SREEDEVIRADHAKRISHNAN, AGED 25 YRS,
D/O.P.B.RADHAKRISHNAN, PAYYAPILLY
HOUSE, ALIYAR ROAD, MALIPURAM P O
COCHIN

BY ADV. SRI.SABU S.KALLARAMOOLA

RESPONDENTS/ACCUSED:

1. SREEJA DEVI, AGED 25 YEARS,
PUDIYAMADAOM, NEAR X-RAY JUNCTION, CHERTHALA
ALAPPUZHA-688 524

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

R2 BY ADV. PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.1262 of 2011

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Dated this the 17th day of November, 2015

JUDGMENT

The appellant company filed a complaint invoking Section 138 of the Negotiable Instruments Act on the strength of a dishonoured cheque. Complaint was filed by the power of attorney holder of the Managing Director of the company. While the matter was pending, a new power of attorney holder was authorized and an application was filed to accept the new power of attorney. While considering this, the learned magistrate entered into the question whether the Managing Director of a company can delegate his powers to another officer by executing a power of attorney. The Court held that since the Managing Director was authorized by the Board of Directors to exercise certain powers and when, he in turn authorized another person to act on his behalf, it amounts to sub-delegation which was not permitted by law. The court below also held that the authorization in accordance with the provisions of the Companies Act, 1956 has not been produced and consequently dismissed the complaint. the manner regarding the maintenance of the resolution of the

company.

2. This is assailed in this appeal. The first respondent has not appeared in spite of notice served. Heard the learned Public Prosecutor.

3. Evidently, the complaint was filed by a power of attorney holder of the Managing Director. Section 2(26) of the Companies Act defines a 'Managing Director' as a person to mean the Director who, by virtue of an agreement with the company in general meeting or by its Board of Directors or, by virtue of its memorandum or articles of association, is entrusted with, which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called. Evidently, the Managing Director is the person statutorily authorized to act on behalf of the company which itself is a corporate personality. In the above circumstances, the Managing Director is competent to delegate that power to one of his officers or any other person by execution of the power of attorney.

4. It is true that the resolution authorizing the Managing Director to execute the power of attorney is not brought on record. Learned counsel for the petitioner contended that since the

application to substitute the new power of attorney was pending, he could not have produced the extract of the Director Board decision. The Court though refers to Sections 192 to 194 of the Companies Act, they are the provisions relating to the power of Board of Director meeting and the maintenance of its resolutions and the minutes of the Director Board meeting. Virtually, that was not relevant for the purpose of consideration of this issue. The question as to whether there was an issue of sub-delegation revolves on the question whether the authority of the Managing Director was created by virtue of a delegation or power. Essentially, these are all questions of fact. Further, the question whether a person is competent to give evidence and to depose on facts is distinct and separate from the competency of the person who instituted the complaint. The crucial question that arose at that point of time was whether the new power of attorney should be permitted to substitute the earlier power of attorney. It seems that the court below mixed up both the issues and the complaint was dismissed invoking Section 256(1) of the Cr.P.C. This order appears to be legally not sustainable. This is liable to be set aside.

In the result, the appeal is allowed. The impugned

order is set aside. The matter is remanded to the court below to enable the complainant to prosecute his case as above and to produce all necessary documents to show the competency of the person prosecuting the case. In the event of the accused remaining absent, court below shall issue fresh summons to the accused to procure his presence. Both sides shall appear before the court below on 30.12.2015.

Sd/-

SUNIL THOMAS
Judge

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True Copy /

P.A to Judge