

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

CRL.A.No. 1560 of 2011 ()

AGAINST THE ORDER IN CC 636/2009 of CHIEF JUDICIAL MAGISTRATE COURT,
ALAPPUZHA DATED 31-05-2011

AGAINST THE ORDER/JUDGMENT IN CrI.L.P. 641/2011 of HIGH COURT OF KERALA
DATED 28-07-2011

PETITIONER/COMPLAINANT:

MUTHOOT VEHICLE & ASSETS FIN. LTD.,
FORMERLY KNOWN AS MUTHOOT LEASING & FINANCE LTD.
KURIAN TOWERS, OPP. SARITHA THEATRE, BANERJI ROAD
ERNAKULAM, REP. BY ITS P/A HOLDER BABY SUJATHA
W/O. JAISURAJ SAISURAJ, CUSTOMS COLONY, HOUSE NO.25
POONITHURA P O , THIRIPUNITHURA

BY ADV. SRI.S.NIDHEESH

RESPONDENTS/ACCUSED AND STATE:

1. CHAKRAYUDHAN, AGED 51, S/O. VASU,
380, SUCHEENDRA BHAVANAM, NORTH ARYADU
MANNAMCHERY, ALAPPUZHA-688538

2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682030

BY ADV. PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.1560 of 2011

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Dated this the 16th day of October, 2015

JUDGMENT

The appellant is the complainant in C.C.No.636 of 2009. The complaint was filed on the basis of a dishonoured cheque, through an authorized signatory of the company, supported by a power of attorney. After appearance of the accused, the learned Magistrate, considered the question of maintainability of the complaint. It was held by the learned Magistrate that, though a power of attorney was produced, the resolution of the Board of Directors of the Company authorizing the Managing Director to appoint a power of attorney was not produced. Further, the Court also raised a doubt as to whether the Managing Director, after having been authorized by the Board of Directors to perform, can further delegate it, by a power of attorney.

2. This is assailed in this appeal. Heard both sides and examined the records.

3. The learned counsel for the appellant admitted that, though the complainant was authorized by a power of attorney

and the power of attorney itself referred to a resolution of the Board of Directors, in fact, the copy of the resolution was not produced. The learned counsel further contended that, they did not get sufficient opportunity to produce the resolution. In the light of a recital in the power of attorney with reference to the resolution of the Board of Directors, necessarily, that could have ended the issue. However to avoid further unnecessary objections on this aspect, the complainant sought permission to produce a copy of the resolution of the Board of Directors. I feel that, a reasonable opportunity can be granted to the appellant to produce the document, before the court below.

4. Regarding the question as to whether a Managing Director who has been authorized by the Company, can delegate by a power of attorney itself is a matter largely depending on the nature of authority conferred. Company being a Corporate personality, can act only through its officers and in this case it appears that, the Managing Director is the competent person. This authority arises from the resolution of the Board. Whether the Managing Director can delegate, largely depends on the nature of authority conferred on the Managing Director and

whether that itself amounts to creation of an agency. This is not an issue which could not have been decided at the preliminary stage itself. I feel that, if such a contention is set up, that can be decided only on the basis of evidence let in regarding the nature of authority vested in the Managing Director. In the light of above, impugned order is to be set aside.

5. 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 necessary documents touching upon the above findings of the court below. The court below shall give a reasonable opportunity to the complainant to produce necessary documents and thereafter proceed in accordance with law. Both sides shall appear before the court below on 09.12.2015.

Sd/-
SUNIL THOMAS
Judge

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P.A to Judge