

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. 1645 of 2011 (A)

AGAINST THE ORDER IN CC 299/2009 of CHIEF JUDICIAL MAGISTRATE,
ALAPPUZHA DATED 30-03-2011

AGAINST THE ORDER IN Cr1.L.P. 647/2011 of HIGH COURT OF KERALA DATED
27-07-2011

APPELLANT/COMPLAINANT:

M/S SREE GOKULAM CHIT & FINANCE CO.(P) LTD.
SREE GOKULAM TOWERS NO.66(OLD NO.356) ARCOT ROAD
CHENNAI-600 024, REP. BY THE POWER OF ATTORNEY
HOLDER JOBY CHACKO
AGED 37, S/O. K.C. CHACKO, LEGAL CLERK
SREE GOKULAM CHIT AND FINANCE CO(P) LTD.
ALAPPUZHA BRANCH

BY ADV. SRI.K.S.BABU

RESPONDENTS/ACCUSED & STATE:

1. MUHAMMED RASHEED A.P
'SARANAS', THONDANKULANGARA., ALLEPPEY-688 006.

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

R1 BY ADV. SRI.R.SUNIL KUMAR
R1 BY ADV. SMT.A.SALINI LAL
R2 BY PUBLIC PROSECUTOR: SRI ABHIJITH LESLIE

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.1645 of 2011

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Dated this the 17th day of November, 2015

JUDGMENT

The complainant is a company stated to be constituted under the Companies Act, 1956. It filed a complaint on the strength of a dishonoured cheque. The complaint was instituted by the company through an officer designating himself as a person authorized to represent the company.

2. Before the court below, the question regarding competency of the person to represent the firm came up in issue. The company had produced a document stated to be the extract of the minutes of its general body meeting. The court below, after having considered the above, held that payee was the company and it is governed by the provisions of the Companies Act. According to the learned magistrate, the authorization should be one under Section 194 of the Companies Act. Holding that the authorization produced before the Court was on a letter head and that, it cannot be deemed as minutes as contemplated under Section 194 of the

Companies Act, the Court acquitted the accused invoking Section 256(1) of the Cr.P.C. This is under challenge in this appeal.

3. Heard both sides and examined the records.

4. There is no dispute that the complainant is a company and the pleadings indicate that it is represented by a person claiming as a authorized representative. There cannot be any dispute that company, being a corporate personality, has not an independent existence though, it has to function through some of its authorized persons. The document produced before the court below shows that it is an extract from the minutes from the proceedings of the Board of Directors. The relevant part of the resolution is extracted on the letter head of the company, signed by the Executive Director and other members of the Director Board. The court below refused to accept it on the ground that it appears to be prepared on the letter head and does not purported to be a proper authorization in accordance with Section 194 of the Companies Act. Section 193 of the Companies Act relates to the minutes of the proceedings of general meetings and of Board and other meetings. It stipulates the authorized proceedings of meetings in relation to the meetings, maintenance of its records and registers. Section 194 of the Companies Act provides that

minutes of meetings kept in accordance with the provision under Section 193 shall be evidence of the proceedings recorded therein. Section 195 of the Companies Act provides that where minutes of the proceedings of any general meeting of the company or of any meeting of its Board of Director or of a committee of the Board (have been kept in accordance with the provisions of Section 193), then, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place.

5. In the light of the above presumption, until the contrary is proved, the production of a document purported to be the minutes of the relevant extract of the meeting of the Board of Directors shall be presumed to be authorized. Evidently, it indicates that if it is challenged, it is a mixed question of fact and law. On the mere basis that it has been printed on a letter head of the company, it could not have been rejected, much less at the threshold, on the ground that it is purported to be an authorization only. If at all any dispute was raised, that calls for adducing the evidence. In the above circumstance, the court below was not justified in rejecting it and acquitting the accused invoking Section 256(1) of the Cr.P.C.

6. In the light of the above finding, the impugned order is not legally sustainable. The matter is liable to be remanded to the court below to enable the complainant to prosecute the matter. However, it is made clear that if the complainant proposes to produce any document to substantiate the authorization and to bring on record the proper person authorized to represent the company, a reasonable opportunity shall be granted to the complainant. It is made clear that the relevant extract of the minutes shall be treated as a proper authorization until the contrary is proved. It is further made clear that in the event of the accused proposing to challenge that, such a contention will be available at the time of evidence.

In the result, the appeal is allowed. The impugned order is set aside. The matter is remanded to the court below for a fresh consideration after enabling the complainant to produce, if any, further requisite document. Both sides shall appear before the court below on 31.12.2015.

Sd/-

SUNIL THOMAS
Judge

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True Copy /

P.A to Judge