IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

CRL.A.No. 1652 of 2011 ( )

AGAINST THE ORDER IN CC 620/2009 of C.J.M., ALAPPUZHA DATED 31-05-2011

AGAINST THE ORDER IN Crl.L.P. 669/2011 of HIGH COURT OF KERALA DATED 29-07-2011

APPELLANT(S)/COMPLAINANT:

MUTHOOT VEHICLE & ASSETS FINANCE LTD,
FORMERLY KNOWN AS MUTHOOT LEASING AND FINACE LTD
KURIAN TOWERS, OPP.SARITHA THEATRE, BANERJI ROAD
ERNAKULAM, REP.BY ITS POWER OF ATTORNEY HOLDER BABY SUJATHA,
W/O. JAISURAJ, SAISURAJ, CUSTOMS COLONY,
HOUSE NO-25, POONITHURA P.O., THRIPUNITHURA.

BY ADV. SRI.S.NIDHEESH

RESPONDENT(S)/ACCUSED AND STATE:

1. JOSEPH DAS J, AGED 33, S/O.JOSEPH,
EDAMUKKIL HOUSE, POLLATHAI P.O., ALAPPUZHA-688657

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

R1 BY ADV.SRI.B.PRAMOD
R2 BY PUBLIC PROSECUTOR SMT.M.G.LISHA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Pn

SUNIL THOMAS, J.

Crl. Appeal No. 1652 of 2011

Dated this the 15th day of October, 2015

J U D G M E N T

The appellant is the complainant in C.C.No.620/2009. The complaint was filed on the basis of a dishonoured cheque through an authorised signatory of the Company. It was supported by a power of attorney. However, after appearance of the accused, the learned Magistrate heard the question regarding the maintainability. It was held by the learned Magistrate that, though a power of attorney is produced, the resolution of the Board of Directors of the Company authorising the Managing Director to appoint a power of attorney was not produced. Further, the Court also raised a doubt as to whether the Board of Directors after having authorised the Managing Director to perform, can further delegate it through a power of attorney.

2. Heard both sides and examined the records.

3. The learned counsel for the appellant contended that, though the complainant was authorised 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 separately produced. The learned counsel further contended

that, they did not got 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.

4. Regarding the question as to whether a Managing Director who has been authorised by the Company can delegate by a power of attorney itself is a matter largely depending on the nature of authority conferred. Company itself 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 a creation of agency. This is not an issue which could have been decided at the preliminary stage itself. I feel that, if such a contention is set up, that can be

decided only at the time of final hearing, 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 04.12.2015.

Sd/-

SUNIL THOMAS, JUDGE.

/true copy/

P. A. to Judge

Pn