

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CRL.R.C.No.1233 of 2011 and
M.P.No.1 of 2011

Nandhini

... Petitioner

Vs.

1. M/s.Vinayaga Textiles,
Rep. by its Partner,
R.Baskaran

2. R.Baskaran,
S/o.G.Raju,
Partner: M/s.Vinayaga Textiles,
43, Arukombai Street,
Ramaiya Colony,
Tiruppur - 641 602.

... Respondents

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order dated 11.05.2010 made in Crl.M.P.No.9295 of 2009 in STC.No.590 of 2007 on the file of the learned Judicial Magistrate No.1, Tiruppur.

For Petitioner : Mr.J.Franklin

JUDGMENT

Vide order dated 11.05.2010 in Crl.M.P.No.9295 of 2009 in STC.No.590 of 2007, the learned Judicial Magistrate No.I, Tiruppur, has allowed the petition filed under Section 311 Cr.P.C. filed to examine the petitioner/drawee of the cheque.

2. Reading of the impugned order discloses that a complaint under Section 138 of the Negotiable Instruments Act, 1881, has been filed in the year 2005. It was returned with certain defects. Subsequently, after rectification, the complaint was taken on file in STC.No.590 of 2007. Complainant, Ms.Nandhini/revision petitioner has filed the complaint, through her power of attorney P.Gurusamy.

3. Contending inter alia that initially when the complaint was filed under Section 138 of the Negotiable Instruments Act, 1881, and returned, the complainant, preferred a police complaint to the

Central Crime Branch, Tiruppur, and further contending that the said police arrested the petitioner and thereafter, the respondent has paid the cheque amount, and was released by the police, and even after receiving the entire amount, taking advantage of the cheque, a private complaint under Section 138 of the Negotiable Instruments Act, 1881, has been filed on the file of the learned Judicial Magistrate No.I, Tiruppur and to prove the above said facts, respondent has filed Crl.M.P.No.9295 of 2009 in STC.No.590 of 2007 on the file of the learned Judicial Magistrate No.1, Tiruppur, seeking for a direction to examine Ms.Nandhini, the petitioner herein. Though the said application has been opposed by the petitioner, drawee of the cheque, through her power of attorney. By observing that unless and until the petitioner/drawee of the cheque is examined, truth regarding payment of the cheque amount, before the Crime Branch Police, would not come to light and by examining her, no prejudice would be caused, the Court below has allowed the said petition filed under Section 311 Cr.P.C.

4. Though Mr.J.Franklin, learned counsel for the petitioner has assailed the correctness of the order made in Crl.M.P.No.9295 of 2009 in STC.No.590 of 2007 on the file of the learned Judicial Magistrate No.1, Tiruppur, contending inter alia that the petitioner's power agent, is in-charge of the business transaction and therefore, he is the conversant with the facts of the case, and hence, the drawer of cheque cannot compel the complainant/petitioner, to get into the box, this Court is not inclined to accept the said contentions.

5. Though in Ground No.3 of the memorandum of grounds, the revision petitioner has contended that filing of the petition under Section 311 Cr.P.C. is only to protract the proceedings, this Court is not inclined countenance the said submission, for the reason that if the petitioner really intended to get a speedy disposal of STC.No.590 of 2007, she could have very well conceded to the prayer, sought for in Crl.M.P.No.9295 of 2009 in STC.No.590 of 2007 on the file of the learned Judicial Magistrate No.1, Tiruppur and by this time, the case instituted in the year 2007, would have been disposed of. Moreover, if there was no truth in the facts pleaded in Crl.M.P.No.9295 of 2009, she could have entered the witness box and deposed the truth, thereby, enabling the Court to arrive at a proper conclusion, in the trial. On the aspect as to whether, a power of attorney can speak about a fact, which is in the personal knowledge of the petitioner, the drawee of the cheque, stated to be received the cheque amount, in the police station, this Court deems it fit to consider few decisions,

(i) In Janki Vashdeo Bhojwani and another vs. Indusind Bank Limited and others reported in 2005 (3) MLJ 109, the Supreme Court in paragraph 12, held as follows :

"12. O.3, Rules 1 and 2, C.P.C., empowers the holder

of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in O.3, Rules 1 and 2, C.P.C., confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined."

(ii) In *R.Arjunan v. Arunachala Gounder* reported in 2007 (5) CTC 133 = 2006 (4) LW 520, I have held that in respect of acts committed with the personal knowledge, Power of Attorney cannot speak on behalf of the Principal. Therefore, I opined that it is not permissible to permit the Power of Attorney to represent the Principal to appear and adduce evidence, in respect of acts, which the Principal had personal knowledge of the same.

(iii) In *Shankar Finance & Investments vs. State of AP* reported in (2008) 8 SCC 536 = AIR 2009 SC 422, the Supreme Court, while explaining, in what circumstances, the evidence of an attorney holder would be relevant and while dealing with a complaint under section 138 of the Negotiable Instruments Act, 1881 signed by the attorney holder of the payee, held as follows:

"A power of attorney holder of the complainant, who does not have personal knowledge, cannot be examined. But where the attorney holder of the complainant is in charge of the business of the complainant and the attorney holder alone is personally aware of the transactions, and the complaint is signed by the attorney holder on behalf of the complainant payee, there is no reason why the attorney holder cannot be examined as the complainant..... In regard to business transactions of companies, partnerships or proprietary concerns, many a time the authorized agent or attorney holder may be the only person having personal knowledge of the particular transaction; and if the authorized agent or attorney-holder has signed the complaint, it will be absurd to say that he should not be examined under section 200 of the Code, and only the Secretary of the company or the partner of the firm or the proprietor of a concern, who did not have personal knowledge of the transaction, should be examined."

(iv) In *Man Kaur (Dead) v. Hartar Singh Sangha* reported in 2010 (10) SCC 512, at Paragraph 12, the Hon'ble Supreme Court held as follows:

"12. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this

requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad."

(v) In *Mukesh Aggarwal v. Rajinder Kumar Pahwa and another* reported in 2012(1) RCR (Criminal) 179 (P&H), the Punjab and Haryana High Court, held as follows:

"The settled law is that the complaint may not essentially be required to be filed by the complainant himself, but complainant certainly has to step into the witness box to prove the allegations levelled against the accused. No doubt, the power of attorney could appear in the witness box, yet his testimony could be appreciated to a limited extent i.e. qua the facts within his personal knowledge. It has been observed by Hon'ble Kerala High Court in case *Anirudhan Vs. Phillip Jacob*, 2006 (4) Criminal Court Cases 130 (Kerala) that power of attorney holder is competent to speak of facts within his exclusive personal knowledge. Similarly, it was observed by Hon'ble Madhya Pradesh High Court in the case of *Mahendra Kumar Vs. Armstrong & another*, 2005 (3) Civil Court Cases 75 that if the attorney has appeared as a witness at the stage of taking cognizance, his testimony could be considered for the purposes of registration of the complaint/issuance of process under Section 204 Cr.P.C., but for further proceeding, examination of the complainant is a must. In another case titled as *M/s G.I. Packaging Private Ltd. and another Vs. M/s S.S. Sales and another*, 2006 (2) S.L.J. (Bombay) 900, the Hon'ble Bombay High Court has observed that power of attorney cannot depose on behalf of the complainant, but he can appear as a witness on behalf of the complainant and depose about the facts in his personal knowledge. It is also well settled by now that if the party, bound to appear to prove the allegations, does not enter into the witness box, then the inference would be drawn that the plea set up by him is not correct."

(vi) In *S.Kesari Hanuman Goud v. Anjum Jehan* reported in 2013 (12) SCC 64, the Supreme Court held as follows:

"13. It is a settled legal proposition that the power of attorney holder cannot depose in place of the principal. Provisions of Order III, Rules 1 and 2 CPC empower the

holder of the power of attorney to "act" on behalf of the principal. The word "acts" employed therein is confined only to "acts" done by the power-of-attorney holder, in exercise of the power granted to him by virtue of the instrument. The term "acts", would not include deposing in place and instead of the principal. In other words, if the power-of-attorney holder has preferred any "acts" in pursuance of the power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for acts done by the principal, and not by him. Similarly, he cannot depose for the principal in respect of a matter, as regards which, only the principal can have personal knowledge and in respect of which, the principal is entitled to be cross-examined. (See: Vidhyadhar v. Manikrao & Anr., AIR 1999 SC 1441; Janki Vashdeo Bhojwani and another vs. Indusind Bank Limited and others, (2005) 2 SCC 217; Shankar Finance & Investments vs. State of AP, AIR 2009 SC 422; and Man Kaur (Dead) v. Hartar Singh Sangha (2010) 10 SCC 512)."

(vii) In A.C.Narayanan v. State of Maharashtra reported in 2013 (11) SCALE 360, the Supreme Court, on reference, framed the question, as follows:

"(i) Whether a Power of Attorney holder can sign and file a complaint petition on behalf of the complainant?/ Whether the eligibility criteria prescribed by Section 142 (a) of NI Act would stand satisfied if the complaint petition itself is filed in the name of the payee or the holder in due course of the cheque?

(ii) Whether a Power of Attorney holder can be verified on oath under Section 200 of the Code?

(iii) Whether specific averments as to the knowledge of the Power of Attorney holder in the impugned transaction must be explicitly asserted in the complaint?

(iv) If the Power of Attorney holder fails to assert explicitly his knowledge in the complaint then can the Power of Attorney holder verify the complaint on oath on such presumption of knowledge?

(v) Whether the proceedings contemplated under Section 200 of the Code can be dispensed with in the light of Section 145 of the N.I. Act which was introduced by an amendment in the year 2002?"

While considering the above issues and different opinion of the Courts, the Apex Court, discussed as hereunder,

"16) In order to find out the answers to the above and also to ascertain whether there is any conflict between the two decisions as pointed out in the referral order, let us consider the factual details and the ultimate dictum laid down in both the decisions.

17) In MMTC (supra), the appellant is a Government of India company. Respondent No. 1 therein is also a company and Respondent Nos. 2 and 3 were the Directors of the respondent-Company. The appellant-Company and the respondent-Company entered into a Memorandum of Understanding (MoU) dated 01.06.1994 and the same was slightly altered on 19.09.1994. Pursuant to the MoU, two cheques were issued by the respondent-Company in favour of the appellant-Company. When both the cheques were presented for payment, the same got returned with an endorsement "payment stopped by drawer". Two notices were served by the appellant-Company on the respondent-Company. As the amounts under the cheques were not paid, the appellant-Company lodged two complaints through one Lakshman Goel, the Manager of the Regional Office (RO) of the appellant-Company. Respondents therein also filed two petitions for quashing of the complaints. By the impugned order, both the complaints were quashed. In the said case as well as in the cases filed subsequently, the respondents took identical contentions in their petitions in order to quash the complaints, viz., that the complaints filed by Mr. Lakshman Goel were not maintainable and that the cheques were not given for any debt or liability. In the impugned judgment, it was held that the complaints filed by Mr. Lakshman Goel were not maintainable. The High Court held that it is only an Executive Director of the Company who has the authority to institute legal proceedings. While holding that the reasoning given by the High Court cannot be sustained, this Court held that Section 142 of the N.I. Act provides that a complaint under Section 138 can be made by the payee or the holder in due course of the said cheque. This Court further held that the complaints in question were by the appellant-company who is the payee of the two cheques. After finding that the Court cannot quash a complaint as stated by the High Court, this Court set aside the same and directed the trial Court to proceed with the complaints against Respondent Nos. 1 and 3 therein in accordance with law.

18) Now, let us consider the later decision of this Court in Janki Vashdeo Bhojwani (supra). This case relates to powers of Power of Attorney under the Code of Civil Procedure, 1908 and it was concluded that a complaint by a power of attorney holder on behalf of original plaintiff is maintainable provided he has personal knowledge of the transaction in question. This Court further held as under:

"12. In the context of the directions given by this Court, shifting the burden of proving on to the appellants that they have a share in the property, it was obligatory on the appellants to have entered the box and discharged the burden by themselves. The question whether the appellants have any independent source of income and have contributed

towards the purchase of the property from their own independent income can be only answered by the appellants themselves and not by a mere holder of power of attorney from them. The power-of-attorney holder does not have personal knowledge of the matter of the appellants and therefore he can neither depose on his personal knowledge nor can he be cross-examined on those facts which are to the personal knowledge of the principal.

13. Order 3 Rules 1 and 2 CPC empower the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order 3 Rules 1 and 2 CPC confines only to in respect of "acts" done by the power-of-attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power-of-attorney holder has rendered some "acts" in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined." This Court further held thus:

"17. On the question of power of attorney, the High Courts have divergent views. In the case of Shambhu Dutt Shastri v. State of Rajasthan it was held that a general power-of-attorney holder can appear, plead and act on behalf of the party but he cannot become a witness on behalf of the party. He can only appear in his own capacity. No one can delegate the power to appear in the witness box on behalf of himself. To appear in a witness box is altogether a different act. A general power-of-attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the capacity of the plaintiff.

18. The aforesaid judgment was quoted with approval in the case of Ram Prasad v. Hari Narain. It was held that the word "acts" used in Rule 2 of Order 3 CPC does not include the act of power-of-attorney holder to appear as a witness on behalf of a party. Power-of-attorney holder of a party can appear only as a witness in his personal capacity and whatever knowledge he has about the case he can state on oath but he cannot appear as a witness on behalf of the party in the capacity of that party. If the plaintiff is unable to appear in the court, a commission for recording his evidence may be issued under the relevant provisions of CPC.

19. In the case of Pradeep Mohanbay (Dr.) v. Minguel Carlos Dias the Goa Bench of the Bombay High Court held that

a power of attorney can file a complaint under Section 138 but cannot depose on behalf of the complainant. He can only appear as a witness.

20. However, in the case of Humberto Luis v. Floriano Armando Luis on which reliance has been placed by the Tribunal in the present case, the High Court took a dissenting view and held that the provisions contained in Order 3 Rule 2 CPC cannot be construed to disentitle the power-of-attorney holder to depose on behalf of his principal. The High Court further held that the word "act" appearing in Order 3 Rule 2 CPC takes within its sweep "depose". We are unable to agree with this view taken by the Bombay High Court in Floriano Armando.

21. We hold that the view taken by the Rajasthan High Court in the case of Shambhu Dutt Shastri followed and reiterated in the case of Ram Prasad is the correct view. The view taken in the case of Floriano Armando Luis cannot be said to have laid down a correct law and is accordingly overruled."

19) As noticed hereinabove, though Janki Vashdeo Bhojwani (supra), relates to powers of Power of Attorney holder under CPC but it was concluded therein that a plaint by a Power of Attorney holder on behalf of the original plaintiff is maintainable provided he has personal knowledge of the transaction in question. In a way, it is an exception to a well settled position that criminal law can be put in motion by anyone [vide Vishwa Mitter (supra)] and under the Statute, one stranger to transaction in question, namely, legal heir etc., can also carry forward the pending criminal complaint or initiate the criminal action if the original complainant dies [Vide Ashwin Nanubhai Yyas v. State of Maharashtra, (1967) 1 SCR 807]. Keeping in mind various situations like inability as a result of sickness, old age or death or staying abroad of the payee or holder in due course to appear and depose before the Court in order to prove the complaint, it is permissible for the Power of Attorney holder or for the legal representative(s) to file a complaint and/or continue with the pending criminal complaint for and on behalf of payee or holder in due course. However, it is expected that such power of attorney holder or legal representative(s) should have knowledge about the transaction in question so as to be able to bring on record the truth of the grievance/offence, otherwise, no criminal justice could be achieved in case payee or holder in due course, is unable to sign, appear or depose as complainant due to above quoted reasons. Keeping these aspects in mind, in MMTC (supra), this Court had taken the

view that if complaint is filed for and on behalf of payee or holder in due course, that is good enough compliance with Section 142 of N.I. Act.

20) The stand of the appellant in Criminal Appeal No. 73 of 2007 is that no complaint can be filed and no cognizance of the complaint can be taken if the complaint is by the power of attorney holder, since it is against Section 200 of the Code and deserves to be rejected. There is no dispute that complaint has to be filed by the complainant as contemplated by Section 200 of the Code, but the said Section does not create any embargo that the attorney holder or legal representative(s) cannot be a complainant.

21) The power of attorney holder is the agent of the grantor. When the grantor authorizes the attorney holder to initiate legal proceedings and the attorney holder accordingly initiates such legal proceedings, he does so as the agent of the grantor and the initiation is by the grantor represented by his attorney holder and not by the attorney holder in his personal capacity. Therefore, where the payee is a proprietary concern, the complaint can be filed by the proprietor of the proprietary concern, describing himself as the sole proprietor of the payee, the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor, and the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor. However, we make it clear that the power of attorney holder cannot file a complaint in his own name as if he was the complainant. In other words, he can initiate criminal proceedings on behalf of the principal.

22) From a conjoint reading of Sections 138, 142 and 145 of the N.I. Act as well as Section 200 of the Code, it is clear that it is open to the Magistrate to issue process on the basis of the contents of the complaint, documents in support thereof and the affidavit submitted by the complainant in support of the complaint. Once the complainant files an affidavit in support of the complaint before issuance of the process under Section 200 of the Code, it is thereafter open to the Magistrate, if he thinks fit, to call upon the complainant to remain present and to examine him as to the facts contained in the affidavit submitted by the complainant in support of his complaint. However, it is a matter of discretion and the Magistrate is not bound to call upon the complainant to remain present before the Court and to examine him upon oath for taking decision whether or not to issue process on the complaint under Section 138 of the N.I. Act. For the purpose of issuing process under Section 200 of the Code, it is open to the Magistrate to rely upon the verification in the form of

affidavit filed by the complainant in support of the complaint under Section 138 of the N.I. Act. It is only if and where the Magistrate, after considering the complaint under Section 138 of the N.I. Act, documents produced in support thereof and the verification in the form of affidavit of the complainant, is of the view that examination of the complainant or his witness(s) is required, the Magistrate may call upon the complainant to remain present before the Court and examine the complainant and/or his witness upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the N.I. Act.

23) In the light of the discussion, we are of the view that the power of attorney holder may be allowed to file, appear and depose for the purpose of issue of process for the offence punishable under Section 138 of the N.I. Act. An exception to the above is when the power of attorney holder of the complainant does not have a personal knowledge about the transactions then he cannot be examined. However, where the attorney holder of the complainant is in charge of the business of the complainant-payee and the attorney holder alone is personally aware of the transactions, there is no reason why the attorney holder cannot depose as a witness. Nevertheless, an explicit assertion as to the knowledge of the Power of Attorney holder about the transaction in question must be specified in the complaint. On this count, the fourth question becomes infructuous.

24) In view of the discussion, we are of the opinion that the attorney holder cannot file a complaint in his own name as if he was the complainant, but he can initiate criminal proceedings on behalf of his principal. We also reiterate that where the payee is a proprietary concern, the complaint can be filed (i) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the "payee"; (ii) the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (iii) the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor.

25) Similar substantial questions were raised in the appeal arising out of S.L.P (Crl.) No. 2724 of 2008, which stand answered as above. Apart from the above questions, one distinct query was raised as to whether a person authorized by a Company or Statute or Institution can delegate powers to their subordinate/others for filing a criminal complaint? The issue raised is in reference to validity of sub-delegation of functions of the power of attorney. We have already clarified to the extent that the attorney holder can sign and file a complaint on behalf of the complainant-

payee. However, whether the power of attorney holder will have the power to further delegate the functions to another person will completely depend on the terms of the general power of attorney. As a result, the authority to sub-delegate the functions must be explicitly mentioned in the general power of attorney. Otherwise, the sub-delegation will be inconsistent with the general power of attorney and thereby will be invalid in law. Nevertheless, the general power of attorney itself can be cancelled and be given to another person.

26) While holding that there is no serious conflict between the decisions in MMTC (supra) and Janki Vashdeo Bhojwani (supra), we clarify the position and answer the questions in the following manner:

(i) Filing of complaint petition under Section 138 of N.I Act through power of attorney is perfectly legal and competent.

(ii) The Power of Attorney holder can depose and verify on oath before the Court in order to prove the contents of the complaint. However, the power of attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions.

(iii) It is required by the complainant to make specific assertion as to the knowledge of the power of attorney holder in the said transaction explicitly in the complaint and the power of attorney holder who has no knowledge regarding the transactions cannot be examined as a witness in the case.

(iv) In the light of section 145 of N.I Act, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the N.I Act and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the Court, nor to examine the complainant or his witness upon oath for taking the decision whether or not to issue process on the complaint under Section 138 of the N.I. Act.

(v) The functions under the general power of attorney cannot be delegated to another person without specific clause permitting the same in the power of attorney. Nevertheless, the general power of attorney itself can be cancelled and be given to another person.

27) We answer the reference on the above terms and remit the matter to the appropriate Bench for deciding the case on merits."

6. Record of proceedings shows that revision case is pending from 2011 onwards. The petitioner has obtained stay of the proceedings in STC.No.590 of 2007 and even after this Court ordered private notice, as early as on 09.09.2011, proof has not been filed for effecting service on the respondent. Thus, it is also evident from the above that it is the petitioner, who has protected the proceedings in STC No.590 of 2007 on the file of the learned Judicial Magistrate No.1, Tiruppur, and not the respondent.

7. In the light of the decisions of the Hon'ble Supreme Court stated supra, power of attorney can adduce evidence on the facts relating to issuance of cheque, dishonour, issuance of notice and filing of complaint, and these facts can be deposed with documents. He comes into picture, only after all the legal requirements for instituting a complaint, are met and authorised to speak about the abovesaid facts. Power of attorney is given to institute a complaint under Section 138 of the Negotiable Instruments Act, 1881, and to conduct the case. It cannot be contended that, whatever transpired between the parties is within the personal knowledge of the power of attorney. On the facts of this case, he cannot speak as to what transpired in the Crime Branch Police Station, Tiruppur, regarding payment, stated to have been made by the drawer, towards the cheque amount. The abovesaid fact can be spoken to, only by the complainant and not by the power of attorney.

8. In the light of the above decisions and for the reasons stated supra, the revision petition is liable to be dismissed and accordingly, dismissed. Interim stay granted in M.P.No.1 of 2011 dated 09.09.2011 is vacated.

Registry is directed to ascertain as to whether records in STC.No.590 of 2007 on the file of the learned Judicial Magistrate No.1, Tiruppur, has been received. If so, Registry is directed to retransmit the records immediately to the learned Judicial Magistrate No.1, Tiruppur. STC.No.590 of 2007 is directed to be disposed of within two months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Judicial Magistrate No.1,
Tiruppur.

2.do thro' The Chief Judicial Magistrate, Tiruppur.

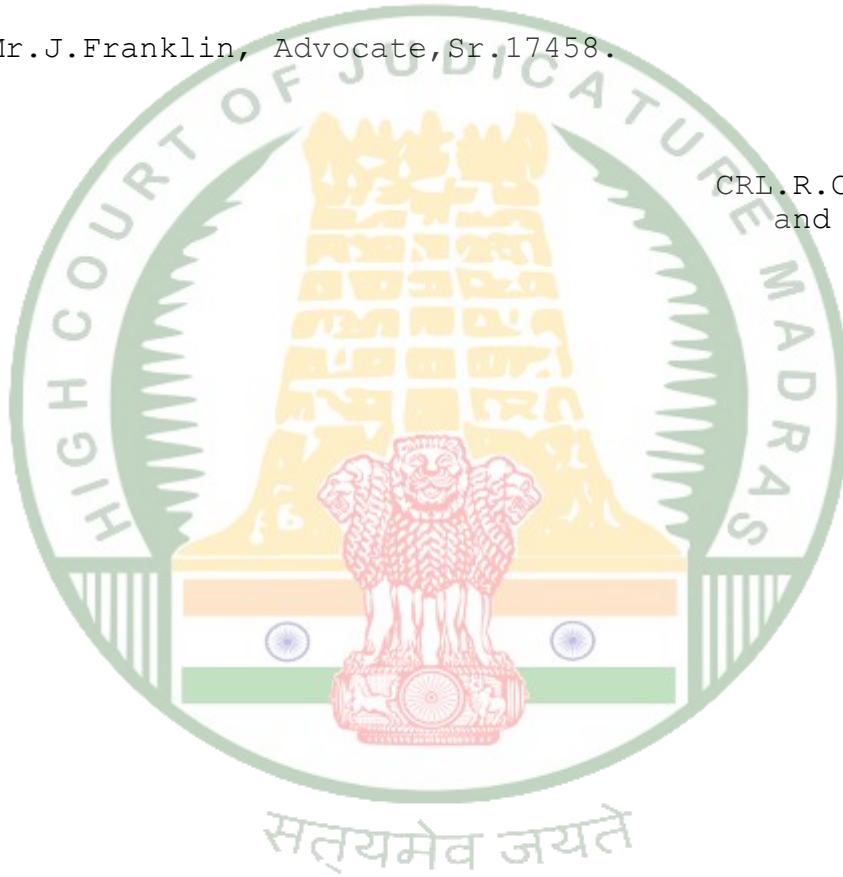
3.The Public Prosecutor,
High Court of Madras,
Chennai.

Copy to:
The Section Officer,
Criminal Section,
High Court, Madras.

+1 cc to Mr.J.Franklin, Advocate,Sr.17458.

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and M.P.No.1 of 2011



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