

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2015

CORAM

THE HON'BLE MR. JUSTICE R.S.RAMANATHAN

Crl.O.P.No.12247 of 2009

and

M.P.No.1 of 2009

K.Venkatesh @ Venkateswaran ...Petitioner/Accused
vs.

Gandhimathi Muthusamy
w/o V.R.Muthusamy
rep. by her husband
Power Agent V.R.Muthusamy ...Respondent/Complainant

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for records relating to the case in C.C.No.681 of 2007, on the file of the Judicial Magistrate No.1, Erode, and to quash the same.

For Petitioner : Mr.B.Kumarasamy

For Respondent : No appearance

O R D E R

The accused in C.C.No.681 of 2007, on the file of the Judicial Magistrate No.1, Erode, is the petitioner herein.

2. The respondent/complainant filed the aforesaid case against the petitioner for offence under Section 138 of Negotiable Instruments Act, (N.I. Act) and this Petition is filed to quash the said case.

3. It is submitted by the learned counsel appearing for the petitioner that, as per the averments made in the complaint, the cheque was issued by the petitioner in favour of one S.Lokhanathan, who endorsed the cheque in favour of the respondent herein, and when the same was presented for realization, it was dishonoured, and after issuing statutory notice, the complaint was filed. The learned counsel submitted that, it is further stated in the complaint that the complainant/respondent, by name Gandhimathi Muthusamy was represented by her husband V.R.Muthusamy, who was her power agent, and Power of Attorney was executed in favour of her husband on 18.09.2007, and a copy of the same was also filed along with the

complaint, and the same was also marked as Ex.P.1 during evidence. The learned counsel submitted that a reading of the Power of Attorney/Ex.P.1, would reveal that power was given to one C.Deivanai, who gave power to her brother V.R.Muthusamy, and the respondent/complainant did not file the Power of Attorney, alleged to have been executed by her in favour of husband/V.R.Muthusmy. The learned counsel, therefore, submitted that the complaint was not presented by proper person and on that ground, the complaint is liable to be quashed. The learned counsel also submitted that, admittedly, the cheque was issued in favour of S.Lokhanathan, and there was no proper endorsement in favour of Gandhimathi Muthusamy, and on that ground also, the complaint is liable to be quashed.

4. Though the respondent was served privately and her name was also printed in the causelist, there is no representation on behalf of the respondent, when the case is taken up today.

5. As rightly submitted by the learned counsel for the petitioner, the complaint was filed by the respondent/Gandhimathi Muthusamy, represented by her power agent/husband, V.R.Muthusamy. Though, along with the complaint, power executed by C.Deivanai in favour of the respondent's husband was filed and marked as Ex.P.1, the power alleged to have been executed by the respondent in favour of her husband/V.R.Muthusamy was not filed. Therefore, when the complainant failed to prove the power of attorney, where, she has authorised her husband to present the complaint, the complaint was not presented by proper person and on that ground, the complaint has to be quashed and the Petition has to be allowed.

6. In the result, the Criminal Original Petition is allowed and the complaint filed against the petitioner in C.C.No.681 of 2007 is quashed on the ground that the complaint was not presented by proper person, and I am not giving any findings regarding other points raised by the petitioner. Consequently, connected M.P. is closed.

sd

s/d-
Assistant Registrar(LA)

True Copy

Sub-Assistant Registrar

To

The Judicial Magistrate No.1, Erode,

+ 1 cc to Mr.B.Kumarasamy, Advocate SR 25983

pur(co)
prkk18/6

Cr1.O.P.No.12247 of 2009