

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.6.2015

CORAM

THE HON'BLE MR.JUSTICE B.RAJENDRAN

CRL.R.C.NO.889 of 2008

Jupiter Print Pac,
Rep.by its Partner
K.Natarajan

.. Petitioner/Accused

Versus

Sri sari Papers Pvt.Ltd.,
Rep.by its Managing Director
A.Senthilkumar

.. Respondent/Complainant

Criminal Revision Case filed under Section 397 read with Section 401 of Cr.P.C, praying to set aside the order dated 13.3.2008 passed by the learned Judicial Magistrate No.1, Gobichettipalayam, in Crl.M.P.No.5422 of 2007 in CC.No.252/03.

For Petitioner : Ms. K.Kalpana
for Mr. R.Vijayaraghavan

ORDER

The Revision is filed by the petitioner questioning the correctness of the order dated 13.3.2008 passed by the Court below in and by which the Court below allowed the petition filed by the respondent/complainant seeking to examine the Managing Director of the Company, namely, Mr.A.Senthilkumar as P.W.2.

2. The revision petitioner is the accused in C.C.No.252 of 2003. The respondent is the complainant. P.W.1, being in the capacity as Power holder on behalf of the complainant company, was examined and he deposed to the fact that the he did not have any direct knowledge about the money transaction. The power was cancelled by the resolution passed by the company Board and Mr.A.Senthilkumar, the Managing Director come into that place as a complainant. He is the person having got absolute knowledge about the entire transaction between the complainant and accused. According to the complainant, the said Managing Director has to be examined to prove their case. Unless and until the said Managing Director is permitted to be examined as P.W.2, the complainant case will stand unproved. Hence, the respondent complainant has filed a petition to examine the Managing Director of the company namely, A.Senthilkumar, as P.W.2 and the same was allowed.

3. The Court below allowed the petition by permitting the respondent/complainant to examine himself as P.W.2 stating that the direct act of the Managing Director cannot be deposed by the power

agent. Aggrieved against the same, the present Revision Case has been filed by the accused.

4. The learned counsel for the petitioner submitted that the application has been allowed to the detriment of the petitioner only in order to fill up lacuna as per the examination of P.W.1. The learned counsel for the petitioner further submitted that the learned Magistrate failed to note that the reasons for examining new witnesses is to overcome the answer given by P.W.1 during his cross examination. Therefore, the learned counsel prays for allowing this revision.

5. Though notice was ordered by this Court way back in the year 2008, no notice was taken by the petitioner. Again, in the year 2012, the petitioner was permitted to take notice. However, notice was not taken till date. Therefore, the matter was taken up for disposal on merits.

6. I have heard the argument of the learned counsel for the petitioner and perused the materials available on record.

7. It appears that originally the complaint has been filed by the complainant, Muthusubramaniam, in the capacity of power holder and that the power itself was cancelled by a Resolution passed by the Company and thereafter, a Managing Director has come into that place as a complainant. Hence, a proper and correct person should be examined is the Managing Director of the company. Therefore, the complainant sought permission to examine the said person as P.W.2.

8. Of course, the only grievance of the petitioner/ accused is that the present petition has been filed only after the cross examination of P.W.1 and in order to fill up the lacuna and that the same will cause serious prejudice to him.

9. From the perusal of the judgment of the Court below, it is found that the resolution itself was passed on 15.6.2015 only by cancelling the Power of Muthusubramaniam, and the same was marked as Ex.P2 and, therefore, there cannot be any objection in allowing the petition. As rightly pointed out by the trial Court, power agent cannot depose the act of the Managing Director, especially, when he did not know the transaction of money between the complainant company and the accused directly. Therefore, the complainant company has sought permission of the Court to examine the Managing Director as P.W.2.

10. It is not the case of the petitioner /accused that the complainant has filed the petition in order to drag on the proceedings. Further, Ex.P2 is marked long before along with the complaint. Therefore, the Court below has rightly come to the conclusion that examination of P.W.2 is necessary and the same will not cause any hardship to the petitioner / accused.

11. As per the judgment of the Hon`ble Supreme Court in JANAKI VASHDEO BHOJWANI AND ANOTHER VS. INDUSING BANK LTD. AND OTHERS (AIR 2005 SUPREME COURT 439), the Power of Attorney cannot depose for the Principal for the acts done by the Principal. 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.

12. Admittedly, in this case, material evidence has been cited in the charge sheet itself and the same is evident in Ex.P2. Further on a perusal of the evidence of the P.W.1, it is evident that the power agent did not know the transaction of money between the complainant company and the respondent directly. Hence, the direct act of the Managing Director cannot be deposed by the power agent. Therefore, considering the above facts and circumstances of the case and in view of the settled legal position, the Court below has rightly come to the conclusion in permitting the complainant to examine P.W.2. Hence, I do not find any reason to interfere with the reasoned order passed by the Court below. Accordingly, the Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Judicial Magistrate
Gobichettipalayam.

2.do thro The Chief Judicial Magistrate,
Erode.

+1 cc to Mr.R.Vijayaraghavan, Advocate,SR.27255.

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krd 30/6

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Cr1.RC No. 889 of 2008

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