



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.10.2015

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

CRL.O.P. (MD) Nos.19540 & 19541 of 2015
& M.P (MD) .Nos.1 & 1of 2015

Konayyan Govindasamy
Proprietor M/s.Sri Durga and Company,
Nos. 5 & 6 Kumutham Street,
Ganapathy Nagar,
New Vilangudi,
Madurai.

... Petitioner
in both petitions

Vs.

M/s.Kulkarni Power Tools Ltd.,
rep. by its POA Holder
Mr.Kumari Kuselan,
47, Sri Ganesh Nagar,
200, Feet Road,
Kolathur,
Chennai-600 009.

...Respondent/Petitioner/
Complainant in both petitions.

Prayer in CRL.O.P. (MD) No.19540/2015 :
Criminal Original Petition is filed under Section 482 of Cr.P.C.
praying to set aside the order dated 17.8.2015 made in
Cr.M.P.No.1157 of 2015 in S.T.C.No.421 of 2015 on the file of the
Judicial Magistrate No.1 (Fast Track Court at Magisterial Level),
Madurai.

Prayer in CRL.O.P. (MD) No.19541/2015 :
Criminal Original Petition is filed under Section 482 of Cr.P.C.
praying to set aside the order dated 17.8.2015 made in
Cr.M.P.No.1160 of 2015 in S.T.C.No.421 of 2015 on the file of the
Judicial Magistrate No.1 (Fast Track Court at Magisterial Level),
Madurai.

For Petitioner : Mr.E.Somasundaram
in both O.Ps.

For Respondent

<https://hcservices.ecourts.gov.in/hcservices> : No Appearance.



COMMON ORDER

The petitioners have come forward with these petitions, challenging the impugned order passed in Cr.M.P.Nos.1157 and 1160 of 2015 in S.T.C.No.421 of 2015 to condone the delay and also for recognition of the present power of attorney to continue the trial.

2. The trial Court has condoned the delay of 69 days and also recognised the present power of attorney, namely, Gananamuthu to continue and prosecute on behalf of the complainant by an order dated 17.08.2015 against which the present petitions have been filed.

3. The learned Counsel appearing for the petitioners submits that the respondent namely M/s.Kulkarni Power Tools Ltd., represented by its Power of Attorney Holder Mr.Kumari Kuselan filed a petition under Section 138 of Negotiable Instruments Act, which was taken on file before the Fifth Metropolitan Magistrate Court, Egmore, Chennai, after taking cognizance of the offence, that has been returned stating that the Court has no jurisdiction on the basis of that it was presented before the Fast Track Court, Madurai. At the time of representing there was a delay of 69 days to represent the same. So he filed an application to condone the delay of 69 days along with the petition to substitute the name of the Power of Attorney Holder in the place of Kumari Kuselan, both the applications are allowed.

4. The learned Counsel appearing for the petitioner mainly focusing upon the facts that the present Power of Attorney namely Gananamuthu is a Regional Manager of the southern state and he is not aware of the personal transactions. So, he is not a competent person and hence he prays for setting aside the same.

5. The learned Counsel appearing for the petitioner further submitted that the delay has not been properly explained and that has not been considered. To substantiate his arguments he relied upon the decision in *A.C.Narayanan -vs- State of Maharashtra and another* reported in 2015(1)MWN (Cr) DCC 65 (SC), wherein it was held that the Power of attorney holder can depose and verify on oath before Court in order to prove contents of complaint, in case the Power of Attorney Holder must have witnessed transaction as an agent of payee/holder in due course or possess due knowledge regarding transactions and prays for setting aside the same.

6. Considering the submissions of the learned Counsel appearing for the petitioner, notice to the respondent is dispensed with since admittedly the respondent herein, who is represented by one Kumari Kuselan filed an application under Section 200 of Criminal Procedure Code, for the offence punishable



under Section 138 of Negotiable Instruments Act, stating that the petitioner herein is a dealer of the complainant Company. During the business transactions from 1st May 2013 to 31.08.2013 the complainant has supplied various materials to the accused to the tune of Rs.12,40,333/- out of which the accused has paid a sum of Rs.2,01,622/- and returned some of the goods worth about Rs.5,19,089/-, and there was still an amount of Rs.5,19,622/- pending from the accused. To discharge that amount he has issued a cheque for Rs.1,28,378/- dated 28.10.2013 that has been presented for realisation which was returned as "payment stopped by drawer". After issuing the statutory notice, he preferred a complaint before the Fifth Metropolitan Magistrate Court, Egmore, Chennai, after taking cognizance of the offence, the case has been transferred to the court having jurisdiction. Meanwhile the Power of Attorney namely Kumari Kuselan left the service. Hence, the present Power of Attorney has been appointed and he was directed to file the same before the Fast Track Court No.I, (Magistrate Level) Madurai, he presented the same along with the petition to condone the delay of 69 days and the delay is condoned. So, the trial Court has considered the same and as the delay has been properly explained and the same is condoned. The present Cr.M.P.No.1160 of 2015 has been filed to recognise the present Power of Attorney namely Gananamuthu, as Power of Attorney in the place of Kumari Kuselan.

7. According to the petitioner the power of attorney is the Regional Manager of the Southern State. He is not personally aware of the transaction so he is not a competent person to represent in principal. He has also relied upon the decision of the Honourable Apex Court in the matter of *A.C.Narayanan -vs- State of Maharashtra and another* reported in 2015(1) MWN (Cr) DCC 65 (SC). In that it was specifically held that the power of attorney holder can depose and verify on oath before Court in order to prove the contents of complaint. So, in the citation at the time of examination as evidence he must have knowledge regarding transaction. He has deposed as to what he was personally aware of the transaction. But, here it is pertinent to note that the petitioner herein is a dealer, who is dealing with the goods and promoting the goods manufactured by the respondent / complainant and the cheque has been issued for the amount payable against Invoice No.DH0553 dated 31.08.2013 for a sum of Rs.1,28,378/-. But admittedly, the cheque has been returned. In such circumstances, the issue as to whether the ingredients of Section 138 of Negotiable Instruments Act, will get attracted can be decided only at the time of trial and not now. It is a well settled dictum laid down by the Hon'ble Supreme Court that the a Power of Attorney can file a complaint and can also depose, the transaction on his personal knowledge. In such circumstances, the <https://hcservices.ecourts.gov.in/hcservices/> correctly considered the same and hence I do not find any illegality in the order passed by the trial Court and hence the order passed by the Trial Court is hereby confirmed and



the criminal original petitions are dismissed. The trial Court is directed to dispose of the case within a period of two months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous petitions are also dismissed.

WEB COPY

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

TO

The Judicial Magistrate No.1
(Fast Track Court at Magistrate level)
Madurai.

GSR

TE/SK-SKN/ : 06/11/2015 : 4P/2C

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& 19541 of 2015
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