

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.04.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

CrI.O.P.No.22370 of 2012

1.M/s.Godline Textile Process

Represented by its Partner, A.Subramaniam,
Cheran Stem Calendaring,
124, S.M.V.S.Rice Mill Compound,
Kongu Main Road, Tirupur - 641 607.

2.A.Subramaniam

3.P.Arun

... Petitioners

Vs.

A.B.Chakravarthy, aged about 31 years,
Prop: Mahatma Gandhi Salt Mundy,
S/o.Arumugam,
Door No.23, Water Tank Road,
Gandhi Nagar, Erode - 9

Represented by his Power of Attorney Holder,
S.Gobi, aged about 28 years,
S/o.S.Selvam,
Door No.80, Sathiyamoorthy Nagar,
Vettukattu Valasu, Erode - 11.

... Respondents

Criminal Original Petitioner filed under Section 482 of
Cr.P.C., to call for records relating to C.C.No.650 of 2010 on
the file of the Judicial Magistrate No.III, Erode and quash
the same.

For Petitioners : Mr.C.Munusamy
for M/s.C AND K LAW FIRM

For Respondents : Notice sent Service Awaited.

O R D E R

The present Criminal Original Petition challenges
proceedings in C.C.No.650 of 2010 on the file of the Judicial
Magistrate No.III, Erode, for offence under Section 138 of
Negotiable Instruments Act.

2. Learned counsel for Petitioner submits that statutory notice under Section 138 of Negotiable Instruments Act has been issued on behalf of the Prop:Mahatma Gandhi Salt Mundy, in his own capacity, the complaint has been preferred through his power of attorney.

3. Learned counsel placed reliance on judgment of the Apex Court in Shanker Finance and Investments vs. State of Andhra Pradesh and others (2008) 8 SCC 536 and would particularly submit that power of attorney, who does not have personal knowledge, cannot be examined on behalf and instead of complainant. In the said decision, it has been held that where the proprietor of a proprietary concern has personal knowledge of the transaction and the proprietor has signed the complaint, he has to be examined under Section 200 of Cr.P.C. In the instant case, it is the power of attorney, who has signed the complaint. Even otherwise case cited is to be read as applicable in the facts of the particular case and in cases resting on facts similar. Section 139 of the Negotiable Instruments Act raises a presumption of commission of offence once the requisites of Section 138 of Negotiable Instruments Act are complied with. The said presumption against accused is rebuttable. It is only when the accused rebuts the presumption against him that the complainant can be called upon to prove his case. It is only in such circumstance, the question of personal knowledge or otherwise of the power agent of the complainant would arise.

4. For the above said reasons, this Criminal Original Petition shall stand dismissed.

Assistant Registrar
Dt.8.11.17

//True Copy//

Sub Assistant Registrar

To
The Judicial Magistrate Court-III,
Erode.

+1 CC TO M/s.CMunusamy, advocate, sr.24854.

Gp(co)
krd 23/11

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