



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE B.GOKULDAS

CrI.R.C.(MD).No.350 of 2016 &
CrI.M.P.(MD).No.4416 of 2016

M.Amalan Moses .. Petitioner/Petitioner/Accused
Vs.

P.Aruldoss
S/o.Ponniah,
64A, Toovipuram 2nd Street,
Tuticorin,
Through his Power Agent Shankar

.. Respondent/Respondent/Complainant

Prayer:- Criminal Original Petition is filed under Sections 397(1) and 401 of Cr.P.C. to call for the records pertaining to the order of dismissal passed by the Fast Track Court (Magisterial Level), Thoothukudi, in Cr.M.P.No.1010 of 2016, dated 27.04.2016 in C.C.No.229 of 2012 in the file of the Fast Track Court (Magisterial Level), Thoothukudi and set aside the same.

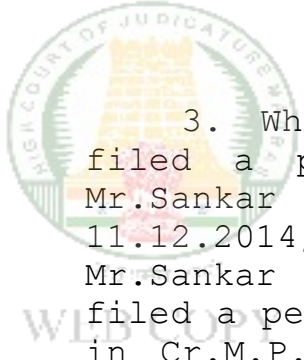
For Petitioner : Mr.B.N.Raja Mohamed
For Respondent : Mr.A.Tiruvadikumar

ORDER

The criminal revision case is filed against the order dated 27.04.2016, made in Cr.M.P.No.1010 of 2016, in C.C.No.229 of 2012 on the file of learned Fast Track Judge (Magisterial Level), Thoothukudi.

2. The gist of the case is as follows:

The respondent filed a complaint under Sections 138 and 142 of Negotiable Instruments Act r/w Section 200 Cr.P.C against the petitioner/accused stating that the petitioner/accused borrowed a sum of Rs.5,00,000 in order to promote his business and agreed to repay the same within two months. On demand, the petitioner/accused issued a cheque drawn on Central Bank of India, Sawyerpuram Branch bearing Cheque No.014239, dated 06.11.2009, for Rs.5,00,000/- in favour of the complainant. When the respondent/complainant presented the cheque, the same was returned with endorsement "insufficient funds". Hence, the above said complaint.



3. When the matter stood thus, the respondent/complainant filed a petition in Cr.M.P.No.5813 of 2014, to appoint one Mr.Sankar as Power Agent. The Trial Court vide order, dated 11.12.2014, permitted the respondent/complainant to appoint Mr.Sankar as his power agent. Thereafter, the petitioner/accused filed a petition not to examine PW1 as power agent of Complainant in Cr.M.P.No.1010 of 2016. After hearing both sides, the Trial Court dismissed the petition vide order dated 27.04.2016. Aggrieved against the said order, the petitioner is before this Court with the present revision petition.

4. The foremost contention of the learned counsel for the petitioner is that there is not even an iota of evidence to show that the above named Shankar, power of attorney of the complainant, has sound knowledge on the transaction as stated in the complaint between the complainant and the petitioner. He further added that since the power agent of the complainant does not have personal knowledge about the transaction, he cannot be examined. In support of his contention the learned counsel for the petitioner relied on the following decisions of the Hon'ble Supreme Court:-

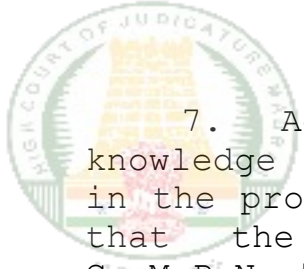
i) (2008) 3 SCC (Cri) 558 (Shankar Finance & Investments V. State of A.P.)

ii) Criminal Appeal No.73 of 2007 and Criminal Appeal No.1437 of 2013, dated 28.01.2015.

5. The learned counsel for the respondent filed counter affidavit and submitted that transaction between the complainant and the petitioner was known to the power agent, namely Shankar, who has also stated so in his proof affidavit. He further stated that the learned Trial Judge had permitted the complainant to appoint Mr.Sankar as Power Agent in Cr.M.P.No.5813 of 2014, vide order dated 11.12.2014. The petitioner herein neither objected to the said proceedings nor challenged the said order passed by the Trial Court. The learned counsel for the respondent further contended that the power agent is very well acquainted with the transaction between the parties and the same is evidenced by the proof affidavit filed before the Trial Court by the power agent, wherein the complainant had informed that power agent was present at the time of borrowing. He further submitted that the power agent had been examined as PW1 as early as on 05.05.2016. In support of his submissions, he relied on the following judgment of the Hon'ble Supreme Court:-

i) 2013(3) MWN (Cr.) DCC 38 (SC) (A.C.Narayanan v. State of Maharashtra)

6. I have carefully considered the submissions made by the learned counsel on either side and also perused the materials



7. Admittedly in the case on hand the power agent has the knowledge about the transaction in question and he has stated so in the proof affidavit. At this juncture, it is pertinent to note that the trial Court vide order dated 11.12.2014, in Cr.M.P.No.5813 of 2014, permitted the complainant to appoint one Sankar as Power Agent only after the law set in motion by the complainant himself. Hence, no one could expect that the knowledge about the alleged transaction between the petitioner and the complainant by the power agent who subsequently appointed and recognized by Court ought to have been mentioned explicitly in the complaint itself. The petitioner herein neither objected to the said proceedings, nor challenged the said order, thereby allowed the said order to attain finality.

8. In the judgment reported in 2013 (3) MWN (Cr.) DCC 38 (SC) (Cited supra), at paragraph number 26, the Hon'ble Supreme Court has held as follows:-

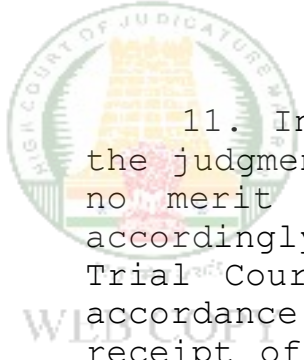
"(i) Filing of Complaint Petition under Section 138 of N.I. Act through Power of Attorney is perfectly legal and competent.

(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."

9. In the present case, the power agent has been recognized by the competent Court and he also filed proof affidavit as PW1, which is also recorded. After letting evidence on both sides, if the petitioner could substantiate that the power agent did not have any knowledge about the transaction, he can very well file a petition to expunge the evidence deposed by the power agent. Thus, the Trial Court has rightly dismissed the petition.

10. The citations relied on by the learned counsel for the petitioner are only applicable to the facts where the power agent did not have the knowledge about the transaction. On the contrary in the case on hand, the power agent has knowledge about the transaction and he also filed a proof affidavit to that effect and the trial Court also recorded the same as chief examination. The citation relied on by the learned counsel for the respondent squarely applies to the case on hand.



11. In view of the foregoing discussion and in the light of the judgment of the Hon'ble Apex Court referred to above, there is no merit in the criminal revision petition and the same is accordingly dismissed. Since the case is of the year 2002, the Trial Court is directed to dispose the case, on merits and in accordance with law, within a period of 6 months from the date of receipt of a copy of this order. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Fast Track Court (Magisterial Level)
Thoothukudi.

+1 cc to MR.A.Thiruvadikumar, ADVOCATE, SR NO: 12198

**Cr1.R.C. (MD) .No.350 of 2016 &
Cr1.M.P. (MD) .No.4416 of 2016
01.03.2017**

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