

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.08.2018

DELIVERED ON : 04.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.A.No.109 of 2009

M/s.Super Steel India

Rep. by its Partner Mr. Naresh Kumar

No.229, Linghi Chetty Street

Chennai- 600 004

... Appellant/Respondent/Complainant

-vs-

T.K.Swamy

... Respondent/Appellant/Accused

PRAYER:

Criminal Appeal filed under Section 378 of Cr.P.C., against the order of acquittal dated 31.10.2008 in C.A.No.68 of 2007 passed by the learned IV Additional Sessions Judge at Chennai reversing the order of conviction and sentence imposed in C.C.No.6262 of 2000 on the file of the XV Metropolitan Magistrate Court, George Town, Chennai dated 19.02.2007

For Petitioner : Mr. G. Ilangovan

For Respondent : Mr.B.R.Sankara lingam

JUDGMENT

The complainant is the appellant herein.

2. For the sake of convenience the parties are referred as per the ranking before the Magistrate Court. The appellant/complainant preferred the criminal complaint against the respondent/ accused alleging that the offence under 138 of Negotiable Instrument Act,1881 The trial court has sentenced the accused to undergo six months Rigorous Imprisonment and to pay a fine of Rs.5000/-in default to undergo simple Imprisonment for two months for the offence under section 138 of Negotiable Instrument Act. In the lower appellate court, appeal was partly allowed and the complaint was dismissed and hence the Criminal Appeal.

3. The facts of the complaint is that in respect of the goods delivered to the accused, there is a sum of Rs.71,050/- is due and payable by the respondent /accused (herein after called as accused) and to repay the same the accused issued two cheques for a sum of Rs.37,750/- and Rs.33,300/-, respectively drawn on State Bank of India, Chintadripet Branch. When the complainant presented the cheques for collection on 06.04.2000, both the cheques were dishonoured, due to insufficient funds. The complainant after complying the mandate of section 138 r/w.142 of Negotiable Instruments Act filed a complaint under Section 200 Cr.P.C before the trial Court for the offence under Section 138 of the Negotiable Instrument Act.

4. During trial, on the side of the complainant, one Wesley Jesudoss, Power holder of the complainant is examined as PW1 and one Krishnamoorthy -the Branch Manager of State Bank of India, Chintadripet was examined as PW.2 and Ex.P.1 to P28 were marked.

5.The learned counsel for the respondent/ accused submitted that the complaint instituted is not sustainable in law and further both the cheques were supported without consideration.

6. The trial court has held that the respondent/ accused has committed the offence and accordingly laid the sentence and the conviction as stated supra. On appeal, the accused raised the plea that since the complaint was filed by the Power agent and the power deed was not executed in accordance with the mandatory provisions of Section 85 of the Evidence Act and the order impugned is liable to be set aside.

7.In support of the contention the learned counsel for the petitioner relied upon the decision in M/s. Electric Constructions and Equipments Co.Ltd -vs-M/s.Jagit Electric Works, Sirs (Haryana) reported in AIR 1984 Delhi Page.. Where in it has held that:

"Power of Attorney- Presumptions of execution-
Power of Attorney neither
executed nor authenticated by Notary
Public - Presumption under S.85 cannot be
raised (Contract Act 1872)S.183"

and the decision of this Court in Parthi Balaiah Chetty (Deceased) and others -vs- Prema Sudhamani and others reported in 2007(4)CTC 144 wherein it is held that

"Power of attorney- Construction of
Preamble Portion as also recitals in

power of attorney proceed on to give general power in favour of agent to do various acts- Power conferred held to be omnibus one and not to do particular Act.

Power of attorney, Presumption u/s.85 Evidence Act conditions to be satisfied - Presumption rebuttable Power of attorney Admissibility is absence of registration - Agent not authorised to collect rents for appropriation to himself. Document creating no interest in immovable property- Requires no registration U/s.17 of Registration Act.

Indian Evidence Act, 1872 (1 of 1872) Section 85 - Power of Attorney- In order to raise presumptions under section 85 of the Evidence Act, two conditions are required to be satisfied (viz) (1) document should be executed before a notary public and (2) it should be authenticated by notary public - when power of attorney is attested by Notary Public in all page after execution by principals, it is prima facie satisfaction of section 85 - Rebutted of presumption can always be done by proper evidence at trial of suit"

8. The trial Court has held that those decisions are applicable to the facts and circumstances of the case and in that case the contention of the accused was accepted and the lower Appellate Court has allowed the appeal. The very same point was herein projected by the respondent counsel during arguments.

9. Admittedly, the complaint has been instituted by P.W. 1 on the strength of Exhibit.P.1 power deed. The complainant is partnership firm from the cast contending in Exhibit.P1 Power deed it is seen that one of the partner of the firm has nominated PW1 to empower him to act as a general power of attorney and have instituted the complaint and in the power it was attested by two witnesses. As per the decision cited above the legal mandate under section 85 of Indian Evidence Act that such a Power of Attorney should be executed before the Notary Public, failing which the same cannot be recognized in law and hence the findings rendered by the lower Appellate Court as per Exhibit.P1, the execution of Power of Attorney is not in accordance with law and does not warrant any interference, since the complaint itself is not maintainable, other point whether

the cheque was supported for consideration as claimed by the appellant does not arise for consideration in the appeal. Hence the order passed by the lower appellate court acquitting the respondent/accused does not call for any interference.

10. In view of the above , this Criminal Appeal is dismissed. The order passed by the learned IV Additional Sessions Judge at Chennai dated 31.10.2008 in C.A.No.68 of 2007 reversing the order of conviction and sentence imposed in C.C.No.6262 of 2000 on the file of the XV Metropolitan Magistrate Court, George Town, Chennai dated 19.02.2007 is hereby confirmed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The IV-Additional Sessions Judge,
Chennai.
2. The XV-Metropolitan Magistrate Court,
George Town, Chennai.
3. Do- Thro' Chief Metropolitan Magistrate,
Egmore, Chennai-8.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras-104.

CRL.A.No.109 of 2009

SV(CO)
CS/24/01/2019

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