



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
ORDER RESERVED ON : 26.03.2018
ORDER PRONOUNCED ON : 23.04.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)No.21349 of 2013
and M.P.Nos.1 & 2 of 2013

S.Thangamani

... Petitioner

Vs.

M/s.Abi & Abi Marketing
Rep. By its Manager,
P.Ambalavanan
No.80, Abi & Abi Towers,
Opp. to Medical College,
M.C.Road, Thanjavur.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the complaint in STC No.317 of 2013 pending before the Judicial Magistrate, (Fast Track Court at Magisterial level), Thanjavur and quash the same as illegal.

For Petitioner : Mr.S.Nagarajan

For Respondent : Mr.T.Manoharan

ORDER

The petitioner herein is the accused in STC.No.317 of 2013 on the file of the Judicial Magistrate (Fast Track Court at Magisterial level), Thanjavur. This criminal original petition has been filed by the petitioner to call for the records pertaining to the STC.No.317 of 2013 on the file of the Judicial Magistrate (Fast Track Court at Magisterial level), Thanjavur and to quash the same as illegal.

2. The case of the prosecution in the trial Court is as follows:-

The petitioner/accused on 21.02.2012 had contacted S.A.Engineering Works Private Ltd., Thippapura, Kasaba Hobli, Doddaballapur Taluk, Bangalore to purchase 45 KVA Generator "EICHER". Upon the request made by the petitioner, the respondent company agreed to supply the said Generator for Rs.3,65,000/- for which the petitioner paid Rs.2,50,000/- in cash by advance and the remaining amount of Rs.1,15,000/- was paid by way of cheque bearing No.128302 drawn at State Bank of India, Nagapattinam Branch. As per the complaint, the respondent company M/s.Abi & Abi Marketing



delivered the Generator on 08.03.2012 through invoice No.459. After receiving the Generator, the petitioner herein found fault with Generator and requested the respondent to replace the same. In the said circumstances, on 11.06.2012 the petitioner received a legal notice in which the respondent claiming Rs.1,15,000/- from the petitioner towards the dishonour of the cheque issued by him. The same was suitably replied on 09.07.2012. Thereafter, the respondent herein filed the complaint before the Fast Track Court, Thanjavur under the provisions of 138 of Negotiable Instruments Act which was taken on file as STC No. 317 of 2013. Now the same was challenged by the petitioner by way of filing this application. In order to substantiate the claim made by the petitioner, the learned counsel appearing for the petitioner made his submission in two folds.

1.The respondent has not filed any complaint within a stipulated period which prescribes in the Negotiable Instruments Act, for which he filed an application under Section 142 (b) of Negotiable Instruments Act for condone the delay of 18 days in the present complaint. The said application was allowed by the learned Magistrate is erroneous. So taking cognizance itself is nothing but illegal.

2.During the time of filing the complaint, P.Ambalavanan who is the Manager of the respondent Company has not filed the power of attorney given in favour of him, so without having any power, he filed the complaint which is also against the provisions of law as enumerated in the Negotiable Instruments Act.

3. Having regard to the first submission it would be relevant to see Section 142 (b) of Negotiable Instruments Act which is extracted as follows:-

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

[provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;

4. So according to the amendment which came into effect on 06.02.2003, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period, the Court is having the power to condone the delay. In this case also on 16.08.2012, on behalf of M/s.Abi and Abi Marketing, the Manager, P.Ambalavanan filed an application mentioning that due to mixing of bundles with other records the complaint has not been filed within the said period as stipulated in the Act and prayed to condone the delay of 18 days. Only after satisfied with the reasons stated by the respondent, the trial Court had allowed the application and then only take the case on file. So only on the provisions available in the Act, the said application has been filed. So allowing the



application and condoning the delay is not at all having any error in law. So the first contention raised by the petitioner is negatived against him.

5. With regard to the second submission, the learned counsel appearing for the respondent submitted that on 20.10.2012 itself P.Ambalavanan, Manager of the M/s.Abi and Abi Marketing was given power for lodging the complaint against the petitioner herein. Subsequent to that only the complaint has been filed before the learned Magistrate which is not against law. So in accepting the complaint filed by P.Ambalavanan is only according to the provisions available in the Act.

6. Now on going through the copy of the complaint filed before the learned Magistrate, it appears that on 16.08.2012 the power holder P.Ambalavanan appearing before the learned Magistrate as a first time which date is earlier than the date of giving power of attorney in favour of P.Ambalavanan i.e., 20.10.2012. In the above situation, this Court also comes to the conclusion that the power holder Ambalavanan without any authorisation in favour of him filed a complaint before the Magistrate Court. But it cannot be a reason to quash the prosecution because it was always open to the owner of M/s.Abi and Abi Marketing to come to the witness box and rectify the act of the power agent P. Ambalavanan. The Hon'ble Supreme Court in a judgment reported in [(2014) 11 SCC 790] in the case of A.C.Narayanan Vs. State of Maharashtra and another has held as follows:-

"33.3 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".

7. In this case also, the Manager of the respondent company who filed the complaint is having the knowledge that the transaction made between the petitioner and the respondent. However, as on now the trial proceedings are not completed in the trial Court. So there may be every possibility to call the principle as a witness for giving the evidence with regard to the substances relating to the power of attorney. Thereby, the second contention raised by the petitioner is also not having any merit for allowing this petition. Accordingly this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar (AE)

/True Copy/



To
Judicial Magistrate Court,
(Fast Track Court at Magisterial level),
Thanjavur.

Copy to

The Section Officer,
Criminal Section (2 Copies),
Madurai Bench Of Madras High Court,
Madurai.

+1CC to Mr.S.Nagarajan, Advocate in SR.No.62990.

DPQ

DS/SV/MMS/SAR-2 :16.05.2018: 4P/5C

order in

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23.04.2018