

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.06.2019
CORAM
THE HONOURABLE Mr.JUSTICE M. NIRMAL KUMAR

Crl.O.P.No.22191 of 2013
and

M.P.No. 1 & 2 of 2013

J.Syed Khiyum

... Petitioner/Accused

Versus

Sanjay Kumar

Rep. His Power Agent

Prakash Chand Jain

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to quash the proceedings in CC.No.1534 of 2012 on the file of the Learned VIII Metropolitan Magistrate, G.T. Chennai, holding the same as abuse of process of Court.

For Petitioner : Mr.D.N.Dhurgasha

For Respondent : Mr.P.Krishnan

O R D E R

The respondent herein filed a private complaint against the petitioner/ accused, which was pending in C.C.No. 1534 of 2012 on the file of the learned VIII Metropolitan Magistrate, Chennai.

2. The case is that the petitioner had borrowed a loan of Rs. 23,50,000/- (Rupees Twenty three Lakh fifty thousand only) from the respondent on 11.12.2003 for some urgent needs, with a promise to repay the same, within a short period, with interest and executed a Promissory note and deposited a title deed for the same. However, the petitioner had paid only meager amount as part of interest for the loan availed by him till 25.07.2011. Thereafter, the petitioner neither paid the Principal nor the interest as per the promise made by him and after several requests and repeated reminders, the petitioner / accused had issued a cheque bearing No. 066861 dated 09.03.2012 drawn on M/s.Canara bank, Hosur Main - 635 109, for a sum of Rs.45,00,000/- (Rupees Forty five lakhs only). The cheque was presented before the bank and it got dishonored. Thereafter, a Statutory notice was issued on 12.04.2012. Though, the accused has received the notice, he failed to reply within the time stipulated ie., 15 days.

3. The only contention of the learned counsel appearing for the petitioner is that the complaint is being prosecuted by the complainant's Power Agent namely one Prakash Chand Jain and a copy of the Special Power of Attorney marked as Ex.P1, is not admissible in the eyes of law, since, it is not complied with the provisions of Section.85 of Evidence Act.

4. The learned counsel for the petitioner, relied upon the Judgment of the Hon'ble Supreme Court in Jugraj Singh and another vs. Jaswant Singh and another [1970 (2) SCC 386] and M/s.Electric Construction and Equipment Co. Ltd Vs M/s.Jagjit Electric Works, Sirsa, [1986(30) DLT 525], in support of his contention.

5. The respondent relied upon M/s.Narayanan Vs State of Maharastra 2014 Crl.J 576 and submitted that power of attorney can be filed any time and the only requirement is that the power of attorney must have the knowledge of Transaction. In this case the power attorney is the son of the principal and he is aware of the transaction with the petitioner.

6. In the above decision, the Hon'ble Supreme court has held that the power of attorney could be filed even during the pendency of the trial and the Power Agent must know about the facts of the case. Further, the father of the complainant is the principal and the power agent / the son is well aware of the transaction between the complainant and the accused.

7. Accordingly, the Criminal Original Petition stands dismissed. In view of the same, it is made clear that the trial Court shall look into the matter freshly on the basis of the observations made by this court and the learned Judge is directed to complete the trial within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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Assistant Registrar

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Sub Assistant Registrar

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To

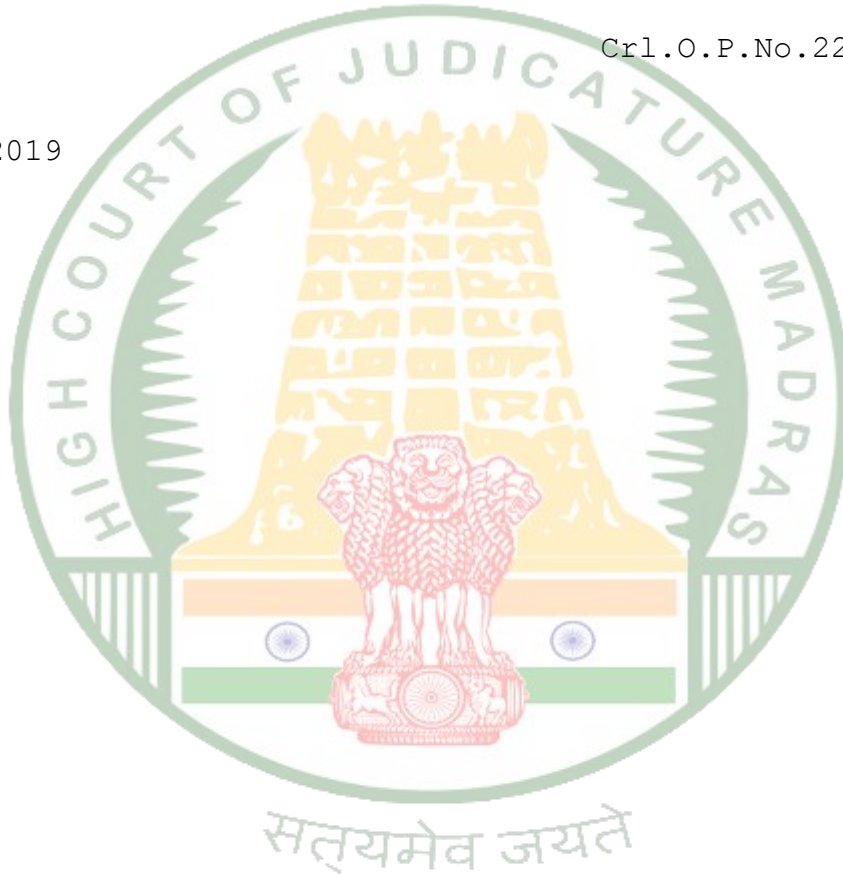
1.The learned VIII Metropolitan Magistrate,
G.T. Chennai.

2.do Thro The Chief Metropolitan Magistrate,
G.T. Chennai.

+lcc to Mr.P.Krishnan, Advocate sr.54803

Cr1.O.P.No.22191 of 2013

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