

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.2899 of 2014
and Crl.M.P.Nos.1 & 2 of 2014

1.Virgin Tech
Rep by its Proprietor S.Manikandan

2.S.Manikandan ... Petitioners/Accused

Vs.

M/s.Rajarajan Associates
P.Natarajan,
S/o.Pungalingam,
Proprietor,
Rep. by Power Agent,
P.Damodharan

...Respondents/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the entire records pertaining to C.C.No.18 of 2014 on the file of the learned Fast Track Magistrate No.2, Coimbatore and Quash the same as illegal.

For Petitioners: Mr.John Sathyan
for Mr.K.Selvakumaraswami

For Respondents: No Appearance

ORDER

This petition has been filed to to call for the entire records pertaining to C.C.No.18 of 2014 on the file of the learned Fast Track Magistrate No.2, Coimbatore and Quash the same as illegal.

2. The learned counsel for the petitioners would submit that the respondent complainant filed the complaint in the capacity of represented by its power agent one, Damodaran. But the power of attorney authorised by that Damodaran does not found place in the list of documents in the complaint and also was not produced before the trial court even at the time of taking sworn statement. Further he submitted that even at the time of recording sworn statement, the said Damodaran did not submit any

power of attorney before the trial court. Therefore, the cognizance taken by the learned Magistrate without perusing that the person who has given sworn statement has proper authorisation or not, is illegal. He further submitted that in the sworn statement, the power of attorney stated that he involved in the entire transaction and represented as if he is the complainant. Admittedly, the complaint has been filed by the power of attorney of the original defacto complainant. He further submitted that the statutory notice was also not served to the petitioners since no acknowledgment was produced with the signature of the petitioners. Therefore, he sought for quashment of the proceedings in C.C.No.18 of 2014.

3. Though notice was served to the respondent and name was printed in the cause list, no one appeared on behalf of the respondent complainant.

4. The respondent filed complaint for the offences punishable under Section 138 Negotiable Instruments Act as against the petitioners. According to the complainant, the petitioners borrowed a sum of Rs.30 lakhs to improve their business. While repaying the same, the petitioners issued cheque for the same and it was presented for collection, but it was dishonoured for the reason 'funds insufficient'. Hence, the complaint.

5. It is seen that the complaint was presented by the respondent by his power agent P.Damodaran. Though it is stated in the short cause title, nowhere mentioned in the complaint that the defacto complainant is represented through his power of attorney. It is also seen that there is no document to show that the defacto complainant P.Natarajan, Proprietor of M/s.Rajarajan Associates represented by his power agent P.Damodaran. The said power of attorney is also not enclosed along with the complaint. According to the sworn statement of the complainant, namely, the power of attorney and the defacto complainant nowhere stated that he represented on behalf of the original defacto complainant and no document was produced by the power of attorney. Therefore, the learned Magistrate failed to see that without any document to show that the said Damodaran is being appointed as power of attorney and have taken cognizance. Therefore, the learned Magistrate ought not to have taken cognizance for the offences punishable under Section 138 of Negotiable Instrument Act as against the petitioners. On this ground, this Court is satisfied that the complaint cannot be sustained as against the petitioners.

6. In view of the above discussion, this criminal original petition is allowed and the proceedings in C.C.No.18 of 2014 on the file of the learned Fast Track Magistrate No.2, Coimbatore is quashed. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

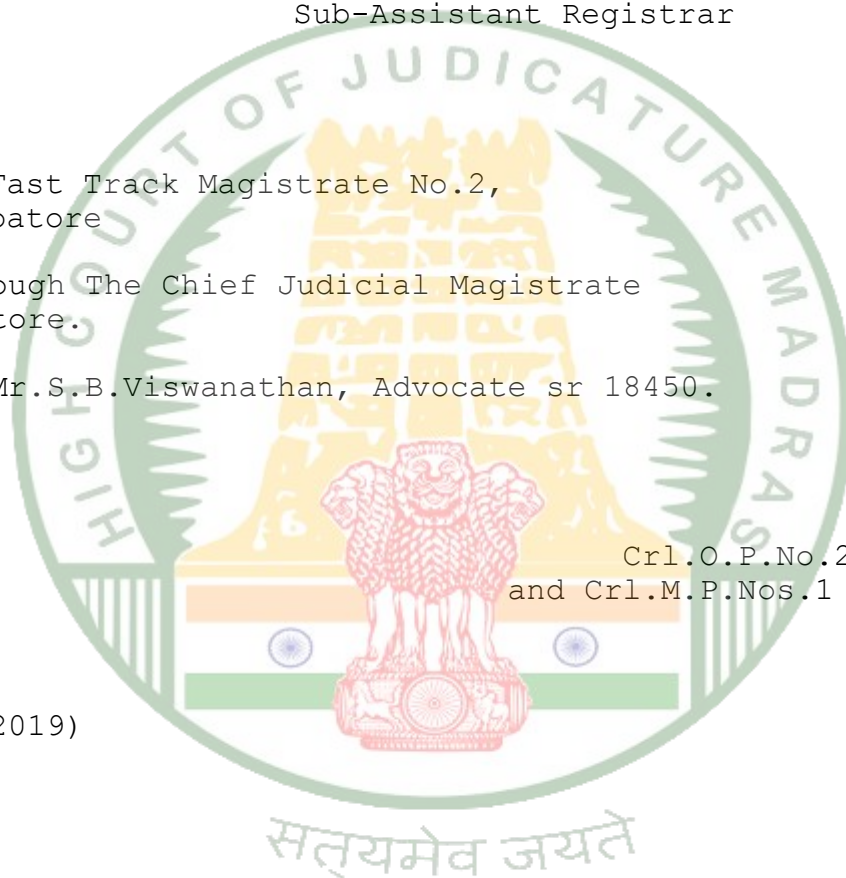
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To

1. The Fast Track Magistrate No.2,
Coimbatore
 2. Do Through The Chief Judicial Magistrate
Coimbatore.
- +1 CC to Mr.S.B.Viswanathan, Advocate sr 18450.

Crl.O.P.No.2899 of 2014
and Crl.M.P.Nos.1 & 2 of 2014

GJ(CO)
SP(22/04/2019)



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