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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

RESERVED ON : 22.04.2021

PRONOUNCED ON: 29.07.2021

PRESENT

The Hon'ble Mr.Justice SATHI KUMAR SUKUMARA KURUP

CRL.M.P.(MD)Nos.2091 to 2093 of 2021
in
CRL.A.(MD)Nos.289, 287 and 288 of 2015

CRL.MP(MD)No.2091 of 2021 in CRL.A.(MD)No.289 of 2015 :

M.GOUTHAMCHAND ... PETITIONER-POWER-AGENT/APPELLANT

Vs

S.VENGATESH ... RESPONDENT/RESPONDENT

CRL.MP(MD)No.2092 & 2093 of 2021 in CRL.A.(MD)No.287 & 288 of 2015 :

M.GOUTHAMCHAND ... PETITIONER-POWER-AGENT/APPELLANT
IN BOTH PETITIONS

Vs

V.NAGARAJAN ... RESPONDENT/RESPONDENT
IN BOTH PETITIONS

PRAYER IN CRL.MP(MD)No.2091 of 2021 :

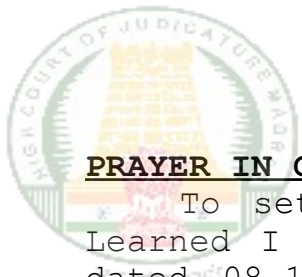
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to permit the petitioner as Power Agent of said Appellant Mr.M.Gowthamchand and consequently to accept the cause title in Cr1.A.(MD)No.289 of 2015 on the file of this Hon'ble Court, as Mr.M.Gowthamchand, Rep by his Power Agent Mr.G.Praveen Kumar.

PRAYER IN CRL.MP(MD)No.2092 of 2021 :

To permit the petitioner as Power Agent of said appellant Mr.M.Gouthamchand and consequently to accept the cause title in Cr1.A.(MD)No.287 of 2015 on the file of this Hon'ble Court, as Mr.M.Gouthamchand, Rep by his Power Agent Mr.G.Praveen Kumar.

PRAYER IN CRL.MP(MD)No.2093 of 2021 :

To permit the petitioner as Power Agent of said Appellant Mr.M.Gouthamchand and consequently to accept the cause title in Cr1.A.(MD)No.288 of 2015 on the file of this Hon'ble Court, as Mr.M.Gouthamchand, Rep by his Power Agent Mr.G.Praveen Kumar.

**PRAYER IN CRL.A. (MD) No.287 of 2015 :**

To set-aside the Judgment and Acquittal order passed by the Learned I Additional District cum Sessions Judge (PCR), Thanjavur dated 08.10.2014 in C.A.No.5 of 2014 and convict the Respondent herein for the offence under Section 138 of Negotiable Instruments Act with maximum punishment and to award a compensation of twice the cheque amount to the Appellant.

PRAYER IN CRL.A. (MD) No.288 of 2015 :

To set-aside the Judgment and Acquittal order passed by the Learned I Additional District cum Sessions Judge (PCR), Thanjavur dated 08.10.2014 in C.A.No.6 of 2014 and convict the Respondent herein for the offence under Section 138 of Negotiable Instruments Act with maximum punishment and to award a compensation of twice the cheque amount to the Appellant.

PRAYER IN CRL.A. (MD) No.289 of 2015 :

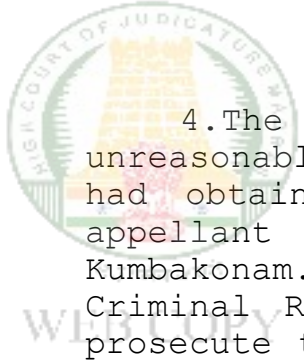
To set-aside the Judgment and Acquittal order passed by the Learned I Additional District cum Sessions Judge (PCR), Thanjavur dated 08.10.2014 in C.A.No.7 of 2014 and convict the Respondent herein for the offence under Section 138 of Negotiable Instruments Act with maximum punishment and to award a compensation of twice the cheque amount to the Appellant.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.B.ANANDAN, Advocate for the petitioner (in all petitions) and of Mr.A.THIRUVADIKUMAR, Advocate for the Respondent (in all petitions), the court made the following order:-

These Petitions have been filed by one G.Praveen Kumar, son of M.Gowthamchand, to permit him to represent the original appellant, namely, M.Gowthamchand, as Power Agent and to accept the cause title in the above appeals.

2.It is his contention that his father M.Gowthamchand, the original de-facto complainant, after filing of appeals, settled down in Rajasthan. The petitioner herein, who is the son of the original de-facto complainant, is looking after the business that was carried out by M.Gowthamchand in Tamil Nadu and he has also to prosecute the case, that was initiated by his father. Since the appeals are pending, the petitioner herein had sought amendment of cause title in the appeals.

3.The learned Counsel for the respondent/accused objected to the same, as there is no such thing substituting the original complainant. It is his further contention that the original complainant is not necessary to prosecute the present criminal appeals. He would further submit that the petitioner herein ought to have been obtained vakalat from the original appellant from the Counsel in Rajasthan.



4.The objection of the respondent herein is unacceptable and unreasonable. The petitioner had stated in the affidavit that he had obtained a registered power of attorney from the original appellant duly registered on the file of the Sub Registrar, Kumbakonam. As far as the objection of the respondent that the Criminal Rule of Practice does not allow or does not permit to prosecute the appeal through power of attorney is concerned, it is being the appeals under Negotiable Instruments Act, the appeal had already been filed by the original complainant and the same are pending. Since the said M.Gowthamchand is in Rajasthan, due to his old age, he is unable to travel to Madurai or Chennai and the son of M.Gowthamchand, as power of attorney holder, can prosecute the appeal. No prejudice will be caused to the respondent/accused.

5.In criminal cases of this nature, private complaint under Section 138 of Negotiable Instruments Act, 1881, Power of Attorney can prosecute the appeal. Power of Attorney cannot lead evidence on behalf of the Principal. Personal knowledge of the facts is to be deposed by the person, who is the original complainant. Instead of the original complainant, the Power of Attorney cannot depose evidence. Here, it is not the case. Here, the evidence was already recorded during trial from the father of the petitioner/defacto complainant. The trial had concluded in convicting the accused. In the Appeal, the learned Sessions Judge had allowed the Appeal filed by the accused, thereby, acquitting the accused. In continuation of the same, the original complainant has to file Criminal Revision. In the place of the original complainant, the son of the original complainant can prosecute the Criminal Revision against the order of acquittal by the learned Sessions Judge.

6.The personal knowledge of the original complainant is required only in collecting evidence during trial. In the act of prosecuting the Appeal, there is no hurdles. The objection by the respondent/accused is against the principles of permitting prosecution by Appeal in cases under Section 138 of Negotiable Instruments Act, 1881, through Power of Attorney. Nowhere in the Criminal Rule of Practice, it is stated that Criminal Revision case cannot be prosecuted by Power of Attorney on behalf of the original complainant, who had executed Power of Attorney deed and had registered the same. Therefore, the objection of the respondent is without any legal basis and against the provisions of law.

5.As per the reported Ruling of the Honourable Supreme Court, in criminal case or in civil case, the power of attorney can prosecute the case, but, cannot enter into the witness box. Here, in the present case, the petitioner, as son of the original complainant/appellant, only seeks to include the word appellant through power of attorney in the cause title. Therefore, the objection of the learned Counsel for the respondent/accused that these petitions are not maintainable, as Criminal Rule of Practice does not allow or permit such amendment, cannot be accepted. Therefore, the same is rejected and this petition is allowed.



On request of the learned Counsel for the petitioner, appeals to be posted for final hearing.

sd/-
29/07/2021

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE I ADDITIONAL DISTRICT CUM SESSIONS JUDGE (PCR),
THANJAVUR.

ORDER in
CRL.M.P. (MD) Nos.2091 to 2093 of 2021
in
CRL.A. (MD) Nos.289,287 and 288 of 2015
Date :29/07/2021

cmr
USK/VR/SAR-II : 03/08/2021 : 4P/2C