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CrI.O.P.No.27505 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

CrI.O.P.No.27505 of 2019 and
CrI.M.P.Nos.14683 & 14685 of 2019

Miss.R.Anitha ... Petitioner / sole accused

Vs.

B.Malarvizhi
Rep by Power of Attorney,
Mr.V.Santhish Kumar.

... Respondent / complainant

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records pending on the file of the learned Fast Track Court No.III, Metropolitan Magistrate Court, Saidapet, Chennai in C.C.No.0001760 of 2019 and quash the said criminal proceedings.

For Petitioner ... Mr.V.Parthiban

For Respondent ... Mr.T.Susindran

ORDER

This Criminal Original Petition has been filed to call for the records pending on the file of the learned Fast Track Court No.III, Metropolitan



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Magistrate Court, Saidapet, Chennai in C.C.No.0001760 of 2019 and
quash the said criminal proceedings.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The petitioner is the sole accused against whom the respondent has filed a complaint for the offence under Section 138 of Negotiable Instruments Act.

4. The learned counsel for the petitioner submitted that though the complainant had sent notice in her personal capacity, she has chosen to file a private complaint along with her power of attorney; the power of attorney cannot represent the principal for matters which is not within his personal knowledge and the said position has already been settled by the Hon'ble Supreme Court in the case of *A.C.Narayanan Vs. State of Maharashtra and Another reported in (2014) 11 SCC 790*, wherein the Hon'ble Supreme Court has held that the power of attorney can make his



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appearance, pleadings and act on behalf of the principal, but he cannot become the witness on behalf of the principal.

5. But the learned counsel for the respondent submitted that the power of attorney is none other than the brother-in-law of the complainant and he is aware of the transaction between the respondent and the petitioner; further, having or not having the knowledge about some transaction is a matter of fact and it cannot be dealt at the threshold stage itself without subjecting the parties to a trial.

6. Mr.V.Sathish Kumar is acting as a power agent on behalf of the Malarvizhi who is the respondent / complainant herein and she is represented through her brother-in-law as he is aware of the facts of the case. Though it is right to state that the power of attorney cannot represent his principal for reasons only within the personal knowledge of the principal, the said power agent is the person who had undertaken the business and other activities of the principal, can still maintain a complaint provided, if he could prove before the Court whether he had knowledge



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about the impugned transaction. Unless the power of attorney is examined and his evidence is obtained, the Court cannot arrive at any short conclusion that the power of attorney who represents the respondent does not have any knowledge about the said occurrence. Only if the parties are allowed to participate in the trial and get themselves cross-examined, the real facts will come to light.

7. In view of the above state reasons, this Criminal Original Petition is dismissed and the Trial Court is directed to complete the trial as expeditiously as possible. Consequently, connected miscellaneous petitions are closed.

15.02.2023

Index: Yes/No
Internet: Yes/No
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To
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The Fast Track Court No.III,
Metropolitan Magistrate Court,
Saidapet, Chennai.

R.N.MANJULA ,J.

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