

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1261 OF 2024

Vilas Ramrao Walakate

Age : 53 years, Occu : Business,

R/o : Bhagwan Nagar, Ambejogai Road,

Latur.

..Petitioner

VERSUS

Surekha Suresh Wadkar

Age : 63 years, Occu : Household,

R/o : Near Amba Hanuman Mandir,

Ambejogai Road, Latur.

..Respondent

...

Advocate for the Petitioner : Mr. Bhandari Anand P.

Advocate for Respondent : Ms. Sundale Rakhi Virbhadra

...

CORAM : S.G. MEHARE, J.

DATED : SEPTEMBER 05, 2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. The petitioner has impugned the orders of the learned Judicial Magistrate First Class, Latur below Exhibit-171 in STCC No.2140 of 2018 dated 26.02.2024 and the order of the learned Additional Sessions Judge, Latur in Criminal Revision Petition No.29 of 2024 dated 06.05.2024.

3. The brief facts of the case were that the respondent had filed a complaint under Section 138 of the Negotiable Instruments

Act. The respective parties have led the evidence. The matter was heard. However, before conclusion of the trial, the respondent/complainant had filed an application Exhibit-171 to exhibit Sr. No.15 i.e. the power of attorney which was filed along with the complaint. The Superintendent of Court had verified the original power of attorney with xerox copy and original was returned. Thereafter, the matter went ahead. By application Exhibit-171, the petitioner/accused raised serious objection that filing the complaint through the power of attorney is ill-founded, false, frivolous, vexatious and not maintainable in the eyes of law and hopelessly time barred. The application does not speak of any provision under which such application was moved. The complainant is taking opportunity to fill up the lacunas by avoiding procedure. The verification of the power of attorney done was neither as per the direction of the Court nor it reflects that the COC made the said endorsement after verification of original. Mere production of the power of attorney would not discharge the complainant or alleged power of attorney. It was an attempt on the part of the person representing before the Court to fill up the lacunas raised during advancement of the arguments by the learned counsel for the accused.

4. The learned Judicial Magistrate considered the submissions of the respective counsels. He has recorded the stages of recording the evidence etc. The learned Judicial Magistrate observed

that nothing has been mentioned in the cross-examination about the power of attorney was a photocopy or original power of attorney filed on record. In an evidence affidavit at Exh.23 and the complaint at Exh.1, it was mentioned that Suresh Siddhlingappa Wadkar has filed the complaint and the evidence affidavit at Exh.23 on behalf of his wife namely Smt. Surekha Suresh Wadkar in the capacity of power of attorney holder. The photocopy of the power of attorney was filed at the time of institution of the case along with list at Exh. 3. The matter was conducted by both the parties and the complainant throughout the case has been represented by the power of attorney holder. The accused did not raise objection on the capacity of the power of attorney holder except denial in his cross- examination at Exh.23. It seems that the power of attorney was not exhibited at the time of further examination-in-chief of the power of attorney holder at Exh. 23. Admittedly, the original power of attorney is not there on record. However, its photocopy is filed along with list at Exh. 3 at Serial No. 15. The original complainant and the power of attorney holder both have filed their affidavits on record stating that the original power of attorney has been misplaced due to which they cannot produce the same on record. It has been further observed that considering circumstances of the present case, the said photocopy at Serial No. 15 which was produced along with list at Exh. 3 is not a new document brought by the complainant and it is filed at the time of filing of the

case and it is also mentioned in the complaint as well as evidence affidavit at Exh. 23.

5. The Revisional Court by the impugned order recorded the finding that mere exhibiting the document does not mean that its contents are proved. The exhibition of copy of power of attorney is a ministerial act and the proceeding cannot be culminated because of the exhibition of the document. It is well settled that the revision is not maintainable against interlocutory orders. On this finding, the petition was dismissed.

6. Learned counsel for the petitioner has vehemently argued that the petitioner has filed an application below Exhibit-40 raising objection that the power of attorney should not argue, file applications as the complainant has duly appointed Advocate Shri S.G. Padole in the case. However, the learned Magistrate has incorrectly rejected that application though the orders were not challenged. He would submit that his endeavour was to show that the power of attorney was not authorized to lead the matter. He further argued that the Superintendent has no authorization to verify the document at the time of filing the complaint. The respondent/complainant had no case that leave may be granted to lead the secondary evidence. Therefore, granting an opportunity to file an affidavit at the fag end of the trial is apparent illegality and granting an opportunity to fill up the lacunas was affecting the

accused. Both impugned orders have caused great injustice to the petitioner. It is a case under Section 138 of the Negotiable Instruments Act in which many presumptions run against the accused. So, whatever he brings from the material on record and the evidence led by the complainant, is one of the sources to rebut the presumption. Both Courts had gone to the wrong way of considering an application and erroneously rejected the application.

7. Per contra, learned counsel for the respondent would submit that the Civil Manual is applied to the case. She has referred to Chapter-27 clause 521 of the Civil Manual that provides that the original document may be verified at the time of filing of the petition. The documents verified by the Superintendent or the person authorized by the Court original need not be produced where the power of attorney has been verified by the officer authorized by the Court unless the Court directs.

8. The evidence was led by the power of attorney for the complainant. He was cross-examined at length. However, mistakenly it was not exhibited. The said documents was on the record since the day of filing the complaint. At no point of time, the objection was raised. The petitioner at no point of time asked the Court to direct the complainant to produce the original. In the meantime, the original was lost. It has been clarified by way of an affidavit. The

respondent is running after the petitioner since 2018 for money for which she was legally entitled.

9. The Superintendent of Court has authority to verify the photocopy of the original and return the original. So, it could not be said that the power of attorney was a new document. The power of attorney holder had led the evidence for and on behalf of the complainant and he has specifically deposed to that effect. He was cross-examined. However, when the matter was heard, some mistakes were discovered that document was not exhibited, which was an authenticated verified document. The genuineness of that power of attorney was not in question. The only question raised was that the xerox copy cannot be exhibited. It was not a mere xerox copy. It was a document verified by the authorized officer. So, it has the authentication.

10. Considering the facts of the case, the Court is of the view that the learned Magistrate has considered the facts of the case and correctly assigned the reasons rejecting the objections and allowing the application. This Court does not find any substance in the petition. Hence, the petition stands dismissed. No order as to costs.

11. Rule stands discharged.

(S.G. MEHARE, J.)