
(1999) 03 MAD CK 0022

In the Madras High Court

Case No : Criminal Revision Case No. 1000 of 1998 and Criminal M.P. No's. 7563 of 1998 and 922 of 1999

Danday Knit Garments and Another

APPELLANT

Vs

Subiksha Spinners (P.) Ltd.

RESPONDENT

Date of Decision : 12-03-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2003) 115 CompCas 307 : (2000) CriLJ 624

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : K.V. Sridharan, in Criminal R.C. No. 1000 of 1998 and Criminal M.P. No. 7563 of 1998 and M. Karthik Seshadri, in Criminal M.P. No. 922 of 1999, for the Appellant; M. Karthik Seshadri in CrI. R.C. No. 1000 of 1998 and CrI. M.P. No. 7563 of 1998 and K.V. Sridharan in CrI. M.P. No. 922 of 1999, for the Respondent

Judgement

A. Ramamurthi, J.—The petitioners/accused filed the revision aggrieved against the order passed in CrI. M. P. No. 2410 of 1998 in C. C.

No. 119 of 1997 dated September 2, 1998, on the file of Judicial Magistrate III, Dindigul.

2. The case in brief for the disposal of the revision is as follows :

The respondent through power agent S. Swami Anandan, filed a complaint u/s 138 of the Negotiable Instruments Act, 1881 (hereinafter referred

to as ""N. I. Act""), against the first petitioner firm and the second petitioner, the proprietor. The complaint was taken on file as in C C. No. 119 of

1997 by the learned Judicial Magistrate No. III, Dindigul. The copy of the power of attorney was also filed in the case. Thiru L Subramaniam,

Director of limited company has given the power of attorney. The notice u/s 138

of the Negotiable Instruments Act was also issued on behalf of the proprietor of the mills to the petitioners. P.W. 1, Swami Anandan was also examined in court, P.W. 2 the personnel officer of the bank was also examined. P.W. 3 the agricultural officer was also examined. The respondent closed his side and the petitioners were examined u/s 313 of the Code of Criminal Procedure, 1973. The case was posted for examination of defence witnesses.

3. On May 27, 1998, the respondent filed a petition u/s 311 of the Code of Criminal Procedure for examination of the director of the mills, viz.,

Thiru L. Subramaniam. In the petition, it is stated that the other directors of the company had already authorised Thiru L. Subramaniam to look

after the management of the mill. The resolution copy of the other directors given in favour of L. Subramaniam was not brought on record during

the course of the enquiry. The petitioners filed a counter raising various objections and this application was filed to fill up the lacuna.

4. The learned magistrate by an order dated September 2, 1998, allowed the petition filed by the respondent and aggrieved against this, the petitioners have come forward with the present revision.

5. Learned counsel for the revision petitioners contended that the application u/s 311 of the Code of Criminal Procedure, has been filed at the

belated stage only to fill up the lacuna. Thiru L. Subramaniam was not at all cited as a witness in the complaint and, hence, he cannot be examined

as an additional witness now. It is not the case of the respondent that the resolution copy given by the other directors of the company to L.

Subramaniam was misplaced or not marked due to inadvertence. Defects cannot be cured by marking the document at a belated stage. The

complainant has already stepped into the shoes of the director Thiru L. Subramaniam.

6. Learned counsel for the respondent contended that Section 311 of the Code of Criminal Procedure gives wide power to examine the witness at

any stage of the enquiry provided it is essential to the juxtaposition of the case.

7. Heard learned counsel of both the parties.

8. Learned counsel for the petitioners contended that the respondent cannot be allowed to examine a witness to fill up the lacuna. Already P. Ws.

1 to 3 were examined and the petitioners were also examined u/s 313 of the

Code of Criminal Procedure. The respondent filed an application u/s 311 of the Code of Criminal Procedure to examine one Thiru L. Subramaniam. The respondent also wanted to mark a document said to have been given by the other directors of the company authorising Thiru L. Subramaniam to look after the management of the mill. The resolution copy of the other directors given in favour of Thiru L. Subramaniam was not mentioned either in the complaint or in the course of evidence. Even the power of attorney filed in the case does not indicate that Thiru L. Subramaniam was authorised by the other directors. Thiru L. Subramaniam was also not cited as a witness in the complaint and, as such, it was stated that he cannot be examined as an additional witness. Defects cannot be cured by marking of a document at a belated stage. The respondent has come forward with a specific case that L. Subramaniam gave power of attorney to Swami Anandan to conduct the case. This being so, the present application filed by the respondent u/s 311 of the Criminal Procedure Code ought not to have been entertained by the trial court.

9. Learned counsel for the petitioner also relied upon a decision of this court in *Govinda Reddy v. State* [1991] LW 42, wherein it is observed that failure of prosecution to conduct the case with care is not a ground to rectify such laches by recourse to Section 311, as it will cause prejudice to the accused. This decision is applicable to the case on hand. Moreover, the respondent has not come forward with any case that L. Subramaniam was authorised by the other directors and only in such capacity, the said Subramaniam gave power of attorney to Swami Anandan. The sworn statement as well as in the evidence, Swami Anandan stated that he was authorised by Subramaniam and nowhere it is stated that the other directors gave power to Thiru L. Subramaniam on the basis of any document. Hence, after the closure of the evidence on the side of the respondent, he cannot be allowed to fill up the lacuna and, as such, I am of the view that the trial court was not correct in allowing the application as it has caused prejudice to the petitioners. The order is liable to be set aside.

10. For the reasons stated above, the revision is allowed and the order passed by the trial court in Crl. M. P. No. 2410 of 1998 dated September 2, 1998, is set aside and the petition is dismissed. Consequently, Crl. M. Ps. 7563 of 1998 and 922 of 1999 are also dismissed.