

(2006) 01 MAD CK 0168

In the Madras High Court

Case No : Criminal O.P. Nos.1354 to 1357 of 2002 and Criminal M.P. No's. 680 to 683 of 2002

T. Muthukaruppan

APPELLANT

Vs

G. Raghavan, rep. by his Power of Attorney, K.
Gopalakrishnan and Others

RESPONDENT

Date of Decision : 19-01-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 203
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2006) 2 ALD(Cri) 25 : (2007) 1 BC 108 : (2006) 3 CivCC 653 :
(2006) 4 CivCC 109 : (2006) CriLJ 1078 : (2006) 2 KLT 996 : (2006) 3
RCR(Civil) 653 : (2006) 2 RCR(Criminal) 603

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : N. Pappiah, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

M. Jeyapaul, J.—Crl.O.P. No.1354 of 2002 is filed against C.C. No.7611 of 1998 on the file of the learned II Metropolitan Magistrate, Egmore.

2. Crl.O.P. No.1355 of 2002 is filed against C.C. No 7607 of 1998 on the file of the learned II Metropolitan Magistrate, Egmore.

3. Crl.O.P. No.1356 of 2002 is filed against C.C. No 7608 of 1998 on the file of the learned II Metropolitan Magistrate, Egmore.

4. Crl.O.P. No.1356 of 2002 is filed against C.C. No 7610 of 1998 on the file of the learned II Metropolitan Magistrate, Egmore.

5. The petitioner is the accused in all the aforesaid case launched against him for the offences u/s 138 of the Negotiable Instruments Act. The payee G. Raghaven in Crl.O.P. No. 1354 of 2002, the payee G.Venkatesan in Crl.O.P. No. 1355 of 2002, the payee G. Vijayakumar in Crl.O.P. No. 1356 of 2002 and the payee Tmt.

G. Ramani in Crl.O.P. No. 1357 of 2002 have filed a complaint through their power of attorney, K. Gopalakrishnan.

6. The payee G. Raghaven in Crl.O.P. No. 1354 of 2002, the payee G.Venkatesan in Crl.O.P. No. 1355 of 2002. the payee G.Vijayakumar in Crl.O.P. No.1356 of 2002 and the payee Tmt.G. Ramani in Crl.O.P. No.1357 of 2002 had not signed the complaint nor had they filed any affidavit in proof of execution of their power of attorney. Further the sworn statement of the power of attorney agent was not recorded on the date of presentation of the complaint.

7. There was no representation for the respondents.

8. Before proceeding to decide these cases on merit it is useful to refer to the various decisions of this Court cited. Of course in the authority in Y. Vijayalakshmi @ Rambha v. Manickam Narayanan, Proprietor, Seventh Channel Communications, represented by its Y. Vijayalakshmi @ Rambha Vs. Manickam Narayanan, Proprietor, Seventh Channel Communications rep. by its Power of Attorney Agent, a learned Judge of this Court (S.R. Singharavelu, J.) after going through the various judgments of the High Courts and the Hon'ble Supreme Court has come to a conclusion that (a) the complaint u/s 138 of the Negotiable Instruments Act, shall be signed by the complainant himself; (b) an affidavit of complainant in proof of execution of power of attorney shall be filed; (c) sworn statement of the power of, attorney agent can be recorded on the date of presentation of the complaint; (d) sworn statement of payee i.e., the complainant shall have to be taken on future date on his appearance in Court and (e) the Magistrate shall thoroughly examine the statement of the agent as well as the principal and the documents produced before exercising discretion under Sections 202 and 203 of the Code of Criminal Procedure.

9. Another learned Judge of this Court (T.S.Arunachalam, J. - as he then was) in Ruby Leather Exports, etc. v. K. Venu, etc. 1994 1 L.W. 34 has taken a view that the power of attorney agent is virtually the payee himself or the holder in due course. Therefore, filing of a complaint for offences u/s 138 of the Negotiable Instruments Act by the power of attorney agent is valid in the eye of law.

10. Another learned Judge of this Court (M.Karpagavinayagam, J.) in the authorities in B. Mahendra Jain v. C.K. Mohammed Ali 1997 2 L.W. 637 and Y. Sreelatha @ Roja v. Mukanchand Bothra 2002 1 CTC 530 : 2002 2 Crimes 19, has held that the power of attorney holder of the payee is competent to make the complaint in writing. The phrase "in writing" cannot be taken to mean to be in writing by the payee himself. Further the cognizance taken on the basis of the sworn statement of the power of attorney holder is valid. Section 142(a) of the Negotiable Instruments Act does not exclude or prohibit the complaint being initiated by the power of attorney agent on behalf of the payee or holder in due course of cheque.

11. Recently, a Full Bench of the Andhra Pradesh High Court in K. Ramachandra Rao and Others Vs. State of A.P. and Another, has held that when Section 142 of

the Negotiable Instruments Act, 1881, does not specifically state that the payee or holder in due course of dishonoured cheque should personally file the complaint, the power of attorney agent of the payee or holder in due course can legally lodge the criminal proceedings u/s 138 of the Negotiable instruments Act.

12. With great respect to the learned Judge of this Court (S.R.Singharavelu, J.), I differ from the view of the learned Judge that the complaint shall be signed by the complainant himself, as Section 142 of the Negotiable Instruments Act does not specifically state that the payee or holder in due course of the cheque shall lodge the complaint himself; the power of attorney holder who has every authority to sign and act on behalf of the principal can lodge a complaint u/s 138 of the Negotiable Instruments Act. Further the affidavit of the complaint in proof of execution of the power of attorney is totally redundant inasmuch as the deed of power of attorney is produced at the time of filing the complaint by the power of attorney holder. The sworn statement of the power of attorney can be recorded at the very inception. Only during the course of trial, the payee will have to come to the box and speak from his knowledge about the legal liability of the drawer, issuance of cheque, presentation of the cheque for payment, dishonour of the cheque, issuance of statutory notice, etc.

13. Here in this case, the power of attorney holder has signed the complaint and filed the same along with the power of attorney. There is no abuse of process of Court. The complaint has been rightly filed by the power of attorney holder on behalf of the payee, and there is no warrant for quashing the criminal proceedings initiated by the power of attorney holder on behalf of the payee. Therefore, the criminal original petitions are liable to be dismissed.

14. In the result, the criminal original petition Nos.1354 to 1357 of 2002 stand dismissed. Consequently, connected criminal miscellaneous petitions are also dismissed.