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(2012) 12 MAD CK 0035

In the Madras High Court

Case No : Criminal R.C. No''s. 98 to 103 of 2009 and Connected M.Ps.

Vadivel Sizing and Weaving Mills (P) Limited and Another — APPELLANT

Vs

Fenner (India) Limited Textile Division — RESPONDENT

Date of Decision : 20-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357(3)
Evidence Act, 1872 — Section 114(g), 85
Negotiable Instruments Act, 1881 (NI) — Section 138, 142, 142(a)

Citation : (2013) 1 MLJ(Cri) 450

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : S. Mouli, for the Appellant; S. Kalyanaraman, for the Respondent

Judgement

B. Rajendran, J.—The respondent herein filed C.C. Nos. 412, 413, 485, 486 and 647 of 1999 on the file of Judicial Magistrate No. 2,

Salem against the petitioners herein u/s 138 of the Negotiable Instruments Act. After conclusion of trial, the trial Court convicted the petitioners u/s

138 of the Negotiable Instruments Act and sentenced them to pay a fine of Rs. 2,500/-, in default to undergo simple imprisonment for a period of

six months and also directed the petitioners to pay compensation of Rs. 4,32,730/-, Rs. 45,895/-, Rs. 4,06,709/-, Rs. 2,39,736/- and Rs.

2,35,036/- being the cheque amount as contemplated u/s 357(3) of Cr.P.C. Aggrieved by the conviction and sentence imposed on them, the

petitioners have filed Crl. A. Nos. 64, 65, 66, 67 and 68 of 2004 on the file of the Additional District and Sessions Judge-cum-Fast Track Court

No. 2, Salem and by judgment dated 12.9.2008, the first appellate Court, while upholding the conviction imposed on the petitioners u/s 138 of the

Negotiable Instruments Act, modified the sentence to pay only the cheque amount in the respective cases within two months, failing which to

undergo simple imprisonment for a period of six months. As against the same, the petitioners have come forward with the present Criminal

Revision Cases. The learned counsel appearing for the revision petitioners would contend that originally, the complaint u/s 138 of the Negotiable

Instruments Act was filed by the respondent through their authorised representative Mr. K.K. Jayaraj. Such authorisation was given Mr. Mathew

Zackaria, who himself has no power to delegate and therefore the very authorisation in favour of Mr. K.K. Jayaraj is without any right. Further, the

said K.K. Jayaraj resigned his job from the respondent company during November 1999 and thereafter, Mr. C. Ravichandran was authorised to

prosecute the complaint on the basis of a power of attorney given by Ramanju Mishra, Chief Executive Officer of the respondent company. On the

basis of such application, the said Mr. C. Ravichandran has filed a petition for amendment of the complaint and he was also examined as P.W. 1

before the trial Court. According to the counsel for the petitioner, there is no evidence produced by the respondent to show that either Mr.

Mathew Zackaria, who authorised Mr. K.K. Jayaraj or Mr. Ramanju Mishra, who authorised P.W. 1 to prosecute the complaint themselves have

any power to authorise filing of the complaint. There was no board resolution passed by the respondent or any one connected with the board

resolution was examined before the Court below. Similarly, Mr. K.K. Jayaraj, who originally filed the complaint has not entered into the witness

box and deposed about the authorisation issued in his favour to file the complaint before the Court below. In such event, the power of attorney

executed in favour of Mr. Jayaraj as well as Mr. Ravichandran, P.W. 1 do not confer any right on them to prosecute the complaint on behalf of the

respondent company and that the power of attorney executed in their favour has become inadmissible in evidence. Even the power of attorney

produced before the Court below does not contain any attestation by a notary public or competent person as contemplated u/s 85 of the Indian

Evidence Act. When the power of attorney has not been executed before the Notary Public, it cannot be presumed to be a document admissible in

evidence. Further, the power of attorney deed has also not been registered before the registering authority. Further, the complainant himself

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admitted in his Cross-examination on 22.1.2004 before the trial Court that he joined the services of the respondent company after execution of the

cheques in question and that he do not know as to when and who had tendered the cheques to the respondent company. P.W. 1 also admitted

that the power of attorney deed has not been signed before the notary public. Therefore, the counsel for the petitioner would contend that the

complaints filed on behalf of the respondent company are not maintainable and the Courts below ought not to have entertained the same. The

above said deficiencies in the complaints have not been considered by the Court below and therefore the orders passed by the Courts below are

liable to be set aside.

2. In this context, the learned counsel for the petitioner relied on the decisions in:-

(i) Sakthi Finance Limited Vs. K. Selvaraj Madras to contend that that as per Section 114 (g) of the Indian Evidence Act, there has to be

presumption raised against the petitioners for having failed to produce the best evidence available at the relevant point of time namely the

authorisation by the Board by way of resolution and for non-filing of the same, the petitioners have to suffer from adverse inference drawn under

the said provision.

(ii) Entertainment Society of Goa Vs. Ritza Wine Pvt. Ltd. and Others, passed by the Bombay High Court (Panaji Bench) to contend that the

complainant is a company registered under the Indian Companies Act and it has not passed any resolution authorising the persons who have

prosecuted the complaints on its behalf and therefore, the complaints are not entertainable and they are against the provisions of Section 142 of the

Negotiable Instruments Act.

(iii) J.K. Industries Limited, rep. by its Assistant Area Manager, Madurai v. Babu, Babu Tyres, Dindigul (2008) 2 Ban. 442 (Mad) wherein the

learned single Judge of this Court held that an agent cannot delegate his powers or duties to another either in whole or in part without express

authority of the principal.

3. Relying on the abovesaid decisions, the learned counsel for the petitioners contend that initiation of the criminal proceedings itself is without any

authorisation and it was also not cured during the pendency of the trial and

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therefore, the trial Court as well as the first appellate Court erred in

entertaining the complaints and resultantly, the conviction and sentence imposed on the petitioners are liable to be set aside.

4. The learned counsel appearing for the respondent/complainant would only contend that even though Mr. Jayaraj, who had initially filed the

complaints, left the services of the company, P.W. 1 namely Ravichandran was duly authorised to prosecute the complaints on behalf of the

respondent company and to fortify the same, the power of attorney was also marked as a document before the trial Court. P.W. 1 also

categorically deposed that he was duly authorised to prosecute the complaints on behalf of the company. Both the trial Court as well as the first

appellate Court have carefully considered the evidence available on record and recorded a finding of guilt against the petitioners. In support of his

contention, the learned counsel for the respondent/complainant relied on the decision of the Honourable Supreme Court M.M.T.C. Ltd. and

Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, wherein the Honourable Supreme Court to contend that the criterion

prescribed u/s 142 of the Negotiable Instruments Act for maintaining a complaint u/s 138 of the Negotiable Instruments Act is that the complaint

must be filed by the payee or the holder in due course of the cheque. Inasmuch as the respondent company has complied with this criteria, the

Courts below are justified in entertaining the complaints and consequently, the conviction and sentence imposed on the petitioners is well founded.

Therefore, the learned counsel for the respondent/complainant prayed this Court for dismissal of the Criminal Revision Cases.

5. I heard the counsel for both sides and perused the materials placed on record. The only point for consideration in these Criminal Revision cases

is whether the initiation of the criminal proceedings by the respondent company before the trial Court is proper and in accordance with law.

6. The main ground of attack made by the counsel for the petitioners is that Mr. Jayaraj, who initially filed the complaints before the Court below

as well as Mr. Ravichandran, who was examined as P.W. 1 before the trial Court are not competent or authorised on behalf of the respondent

company to file the Complaints u/s 138 of the Negotiable Instruments Act. There was no evidence made available to show that the respondent

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company had duly authorised either Mr. Jayaraj or Mr. Ravichandran, by passing a Board resolution or otherwise, to file the complaints against the

petitioner.

7. In order to determine the issues involved in these criminal revision cases, it is necessary to look into the evidence let in by P.W. 1 in his cross-

examination before the trial Court on 22.1.2004. The relevant portion of his evidence are extracted hereunder:

8. From the evidence of P.W. 1, it is clear that the respondent company has not authorised either Mr. Mathew Zackaria, who authorised Mr.

K.K. Jayaraj who originally filed the complaints or Mr. Ramanju Mishra, who authorised P.W. 1 to prosecute the complaint. The respondent has

also not filed any Board resolution or any other piece of evidence to prove the nature and source of authorisation to prosecute the complaints

before the trial Court. Even the power of attorney filed before the trial Court was not attested before the Notary Public or it was a registered one

in accordance with the provisions of Section 114(g) of the Indian Evidence Act.

9. In the decision of the this Court in Sakthi Finance Limited v. K. Selvaraj (supra) it was held that there is no explanation forthcoming as to who

the authorised signatory was and what for was the authorisation and by whom. There was also no resolution passed by the Board nor there was

any other document produced in evidence to show that the person who has signed the said document as authorised signatory really had

authorisation to execute the said document. Therefore, this Court confirmed the order of acquittal passed by the lower Appellate Court. In para

No. 9, it was held as follows:

9. A perusal of Exhibit P-1 would go to show that the same has been signed by a person claiming himself to be the authorised signatory of the

appellant company. As rightly held by the lower appellate Court, it has not been explained as to who the authorised signatory was and what for

was the authorisation and by whom. As pointed out by the learned counsel for the respondent now, no resolution of the board nor any other

document has been produced in evidence to show that the person, who has signed the said document as authorised signatory really had

authorisation to execute the said document. This creates doubt. Even before this Court, the learned counsel for the appellant is not in a position to

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explain this. Therefore, as far as the Ist. ground upon which the acquittal has been made by the lower Appellate Court deserves to be confirmed.

10. In the decision of the Bombay High Court in Entertainment Society of Goa v. Ritza Wine Private Limited and Others (supra) relied on by the

counsel for the petitioners, it was held in para-10 as follows:

10. In the case of Chico Ursula D ''Souza v. Goa Plast Pvt. Ltd. (supra) this Court has again held that a person who claims to represent another is

expected to produce an authority or power which entitles him to so appear. In the case of Goa State Co-OP. Bank Ltd. v. Kurtarkar Traders

(supra) it was held that the complainant as a body corporate can act only by resolutions passed by the directors at its meeting. There was no

resolution passed by the complainant in favour of its Managing Director authorising him to appoint any person to prosecute the defaulters whose

cheques bounced. Power to lodge complaints could have been given only by a resolution by the board of directors. There was none given and

none was produced. It was further observed that in the case of Ashok Bampto Pagoi v. Agencia Real Canacona Pvt. Ltd. (supra) a complaint

even by a director of company was not maintainable without a resolution by the board of directors.

11. Further, in the decision of this Court in J.K. Industries Limited, rep. by its Assistant Area Manager, Madurai v. Babu, Babu Tyres, Dindigul

(supra) it was held that an agent cannot delegate his powers or duties to another either in whole or in part without express authority of the principal.

The relevant paragraphs in the said decision can usefully be extracted hereunder:

12. From the close reading of the said Rule, the delegation powers completely vests with the Directors and they can appoint any person to perform

any act. In the instant case, the Directors of the complainant have not delegated any power to the Assistant Area Manager viz., Rajagopal to

institute the present proceeding. Only the Regional Manager has delegated necessary power to the said Rajagopal to institute the present

proceeding.

13. At this juncture, a nice legal question arises as to whether a delegate can further delegate. The axiomatic maxim is ""Delecata protest as non

protest delegari"" The maximum lays down the general rule that an agent cannot delegate his powers or duties to another, in whole or in part,

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without the express authority of the principal or authority derived from the statute.

12. In the decision rendered by this Court in Ruby Leather Exports Vs. K. Venu, it was held in para No. 32 as follows:

32. The cause title in the complaint shows K. Venu as the complainant. He has stated even in the cause title, that he was representing Vandhana

Chemicals, Madras. It cannot be stated, that the complainant is the payee, Vandhana Chemicals, which stood represented by Venu, an authorised

representative, who could be deemed as such in law. Further, as I have already stated, while narrating the facts, no authorization as such was also

produced before the trial Magistrate at the time of taking cognizance. On the peculiar facts of this case, it has to be held, that cognizance of the

impugned complaint was barred u/s 142(a) of the Negotiable Instruments Act.

13. Therefore, in the light of the above decisions and in the light of the admitted fact that the respondent company has not authorised its employees

to file the complaints or prosecute the complaints against the petitioner before the trial Court, the complaints filed by it before the trial Court are not

maintainable. Therefore, I hold that the complaints have been filed by the respondent company before the trial Court without due authorisation and

the Courts below ought not to have entertained the same. In the result, the Criminal Revision Cases are allowed by setting aside the Judgment

dated 12.9.2008 made in Crl. A. Nos. 64, 65, 66, 67 and 68 of 2004 on the file of the Additional District and Sessions Judge-cum-Fast Track

Court No. 2, Salem modifying the judgment dated 16.4.2004 made in C.C. Nos. 412, 413, 485, 486 and 647 of 1999 on the file of Judicial

Magistrate No. 2, Salem.

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