

HIGH COURT OF JAMMU & KASHMIR
AT JAMMU

CRMC No.581/2018 & IA No.01/2018

Date of order: 29.03.2019

Rajinder Khajuria	vs.	Jain Enterprises
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Coram:

Hon'ble Mr. Justice Sanjay Kumar Gupta, Judge

Appearing counsel:

For petitioner(s) : Mr. Parshotam Lal Sharma, Advocate

For respondent(s) :

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| i) | Whether approved for reporting in Law Journals etc.: | Yes/No |
| ii) | Whether approved for publication in Press: | Yes/No |
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1. In the instant petition filed under Section 561-A Cr.P.C., the petitioner *inter alia* seeks quashment of the complaint titled **Jain Enterprises through its Power of Attorney holder Sh. Rajnish Kumar Jain Vs. Rajinder Khajuria** as well as order dated 23.10.2017 by virtue of which the trial court i.e. learned Mobile Magistrate (Electricity), Jammu has opined that prima facie a case for the commission of offence under Section 138 of the Negotiable Instruments Act has been established and issued process against the petitioner.
2. In this petition, it has been stated that the petitioner has been fraudulently implicated in the afore stated complaint under section 138 of the Negotiable Instruments Act by the respondent even receiving the cheque amount. The respondent has filed false and frivolous complaint joining hand with Prop. M/s Jain Enterprises

being its Power of Attorney and without having authorization of the Prop. M/s Jain Enterprises i.e. payee as held by the Supreme Court of India most perfectly in the case titled "A.C. Narayanan & anr. V/S State of Maharashtra & ors." reported in AIR 2015 SC 1198 and the mandate of Sec. 142 of the N. I. Act. Petitioner being aggrieved by the complaint preferred by the respondent and order dated 23.10.2017 passed by learned Mobile Magistrate (Electricity), Jammu has challenged the same on the ground that complaint prima-facie reveals that the same is not maintainable; that it has not been verified or supported by affidavit. Attorney holder was not having personal knowledge of transaction in question. The impugned order passed by the trial court is the glaring example of abuse of the process of court.

3. I have considered the argument of counsel for petitioner and law on the subject.
4. It would be relevant to reproduce the relevant paras of the complaint filed by the respondent before the trial court as under:

- “1. That accused has purchased electronic goods from complainant towards payment of which accused issued a cheque No.028934 dated 15.05.2017 for an amount of Rs.20,000/- (Rupees twenty thousand only) drawn on J&K Bank Branch Chak Malal.**
- 2. That complainant presented said cheque for collection of payment before the J&K Bank Branch Kachi Chawani, Jammu, which has been dishonoured vide memo dated 11.08.2017 on the ground of "Funds Insufficient".**

3. That complainant sent a legal notice dated 08.09.2017 by registered post which has been duly received by the accused but payment is not made by accused.
 4. That present complaint is filed through Sh. Rajnish Kumar Jain who is duly authorized attorney of M/s Jain Enterprises.
 5. That accused issued cheque without making any arrangement for honouring the same. Accused has committed a very serious offence punishable under section 138 of the Negotiable Instruments Act.”
5. It is apt to reproduce the operative para of the order impugned as under:
- “I have also examined the complainant and his statement in this context has been recorded. After going through the complaint and the statement of the complainant, I am of the opinion that prima facie a case for the commission of the offence u/s 138 N.I. Act has been established as such accused is required to be summoned. Office shall issue summon to the accused for his appearance before the court. Copy of the complaint shall accompany the summon. Put up on 29.12.17.”
6. The only question to be decided is as to whether an attorney holder is competent to file complaint under section 138 of N.I Act, because attorney holder has no personal knowledge of transaction between complainant and petitioner herein. Further, magistrate concerned can record the statement of attorney holder under section 200 Cr.P.C. and issue process under section 204 Cr.P.C.
7. In case titled **A.C. Narayanan & anr. Vs. State of Maharashtra & ors.**, reported in **AIR 2015 SC 1198**, upon which counsel has

relied his case, itself says that attorney holder can file case under section 138 of N.I. Act. The relevant para of said judgment reads as under:-

“It is not in dispute that there is a conflict of opinion on this issue amongst various High Courts, including the decision of Bombay High Court in Mamtadevi Prafullakumar Bhansali vs. Pushpadevi Kailashkumar Agrawal & Anr. [2005 (2) Mah. L.J. 1003) on the one hand and a decision of the Andhra Pradesh High Court in [S.P. Sampathy vs. Manju Gupta and Anr.](#) (2002) Crl.L.J. 2621), on the other. One of the questions which would arise for consideration is as to whether the eligibility criteria prescribed by Section 142(a) of the NI Act would stand satisfied if the complaint petition itself is filed in the name of the payee or the holder in due course of the cheque and/or whether a complaint petition has to be presented before the Court by the payee or the holder of the cheque himself.

Another issue which would arise for consideration is as to whether the payee must examine himself in support of the complaint petition keeping in view the insertion of Section 145 of the Said Act (Act No. 55 of 2002).

In our opinion, in view of difference of opinion amongst various High Courts as also the decisions of this Court in M.M.T.C. Ltd. (Supra) and Janki Vashdeo Bhojwani (supra), particularly in view of the fact that in the later case the earlier one was not noticed, an authoritative pronouncement is necessary to be given in this regard. We, therefore, are of the opinion that the matter should be considered by a larger Bench."

12. The matter was considered by a larger Bench of three Judges. By judgment dated 13th September, 2013 reported in 2013 (11) SCALE 360 - A.C. Narayanan vs. State of Maharashtra the said larger Bench framed the following questions:

(i) Whether a Power of Attorney holder can sign and file a complaint petition behalf of the complainant? Whether the eligibility criteria prescribed by Section 142(a) of NI Act would stand satisfied if the complaint petition itself is filed in the name of the payee or the holder in due course of the cheque?

(ii) Whether a Power of Attorney holder can be varied on oath under Section 200 of the Code?

(iii) Whether specific averments as to the knowledge of the Power of Attorney holder in the impugned transaction must be explicitly asserted in the complaint?

(iv) If the Power of Attorney holder fails to assert explicitly his knowledge in the complaint then can the Power of Attorney holder verify the complaint on oath on such presumption of knowledge?

(v) Whether the proceedings contemplated under Section 200 of the Code can be dispensed with in the light of Section 145 of the N.I. Act which was introduced by an amendment in the year 2002?

13. The first question relating to the eligibility of Power of Attorney holder to sign and file a complaint petition on behalf of the complainants and whether eligibility criteria prescribed by Section 142(a) of N.I. Act is satisfied, if the complaint petition itself is filed in the name of the payee or the holder in due course of the cheque, was answered by larger Bench in affirmative by its judgment in *A.C. Narayanan vs. State of Maharashtra*, 2013(11) Scale 360 with observation, which reads as follows:

"19) As noticed hereinabove, though *Janki Vashdeo Bhojwani*(supra), relates to powers of Power of Attorney holder under CPC but it was concluded therein that a plaint by a Power of Attorney holder on behalf of the original plaintiff is maintainable provided he has personal knowledge of the transaction in question. In a way, it is an exception to a well settled position that criminal law can be put in motion by anyone [vide *Vishwa Mitter* (supra)] and under the Statute, one stranger to transaction in question, namely, legal heir etc., can also carry forward the pending criminal complaint or initiate the criminal action if the original complainant dies [*Vide Ashwin Nanubhai Vyas vs. State of Maharashtra* (1967) 1 SCR 807]. Keeping in mind various situations like inability as a result of sickness, old age or death or staying abroad of the payee or holder in due course to appear and depose before the Court in order to prove the complaint, it is permissible for the Power of Attorney holder or for the legal representative(s) to file a complaint and/or continue with the pending criminal complaint for and on behalf of payee or holder in due course. However, it is expected that such power of attorney holder or legal representative(s) should have knowledge about the transaction in question so as to able to bring on record the truth of the grievance/offence, otherwise, no criminal justice could be achieved in case payee or holder in due course, is unable to sign, appear or depose as

complainant due to above quoted reasons. Keeping these aspects in mind, in MMTC (supra), this Court had taken the view that if complaint is filed for and on behalf of payee or holder in due course, that is good enough compliance with Section 142 of N.I. Act. "

14. The second question relating to verification of Power of Attorney holder on oath as prescribed under Section 200 of the Code was answered as follows:-

"20) The stand of the appellant in Criminal Appeal No. 73 of 2007 is that no complaint can be filed and no cognizance of the complaint can be taken if the complaint is by the power of attorney holder, since it is against Section 200 of the Code and deserves to be rejected. There is no dispute that complaint has to be filed by the complainant as contemplated by Section 200 of the Code, but the said Section does not create any embargo that the attorney holder or legal representative(s) cannot be a complainant.

22) From a conjoint reading of Sections 138, 142 and 145 of the N.I. Act as well as Section 200 of the Code, it is clear that it is open to the Magistrate to issue process on the basis of the contents of the complaint, documents in support thereof and the affidavit submitted by the complainant in support of the complaint. Once the complainant files an affidavit in support of the complaint before issuance of the process under Section 200 of the Code, it is thereafter open to the Magistrate, if he thinks fit, to call upon the complainant to remain present and to examine him as to the facts contained in the affidavit submitted by the complainant in support of his complaint. However, it is a matter of discretion and the Magistrate is not bound to call upon the complainant to remain present before the Court and to examine him upon oath for taking decision whether or not to issue process on the complaint under Section 138 of the N.I. Act. For the purpose of issuing process under Section 200 of the Code, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the N.I. Act. It is only if and where the Magistrate, after considering the complaint under Section 138 of the N.I. Act, documents produced in support thereof and the verification in the form of affidavit of the complainant, is of the view that examination of the complainant or his witness(s) is required, the Magistrate may call upon the complainant to remain present before the Court and examine the complainant and/or his witness upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the N.I. Act.

23) In the light of the discussion, we are of the view that the power of attorney holder may be allowed to file, appear and depose for the purpose of issue of process for the offence punishable under Section 138 of the N.I. Act. An exception to the above is when the power of attorney holder of the complainant does not have a personal knowledge about the transactions then he cannot be examined. However, where the attorney holder of the complainant is in charge of the business of the complainant payee and the attorney holder alone is personally aware of the transactions, there is no reason why the attorney holder cannot depose as a witness. Nevertheless, an explicit assertion as to the knowledge of the Power of Attorney holder about the transaction in question must be specified in the complaint. On this count, the fourth question becomes infructuous.”

8. This judgment has been reiterated by a three judges Bench of Apex Court in CRIMINAL APPEAL NO.237 OF 2012 in case titled **SK. TAMISUDDIN Vs. JOY JOSEPH CREADO & ANR.**, decided on 25.09.2018, which reads as under:-

“We have considered the decision of this Court in A.C. Narayanan vs. State of Maharashtra and Another (2015) 12 SCC 203, wherein this Court has clearly held that a complaint filed by the power of attorney would be maintainable in law. If that is so, the initial complaint filed by the appellant on behalf of Sairabee as the complainant would not be invalid in law as held by the High Court in the order under challenge. After the death of Sairabee, the application filed by the appellant was to continue the criminal prosecution as the legal heir of the deceased Sairabee, the High Court seems to have understood this application to be for continuance of the criminal prosecution in his capacity as a Power of Attorney. The competence of the legal heir of a person aggrieved to continue a criminal complaint is not in doubt. The High Court therefore, in our considered view, ought to have allowed the continuance of the proceedings as prayed by the appellant and ought not to have quashed the proceedings as it has been done.

5. We, therefore, set aside the order of the High Court and direct for commencement of the trial against accused-respondent No.1 from the stage at which the trial was interdicted by the High Court by the Order under challenge.

6. The appeal is consequently allowed in the above terms.”

9. In present case, respondent-Jain Enterprises has filed the complaint through power of attorney holder Rajnish Kumar Jain; the complaint has been supported with attested special power of attorney; which reveals that attorney holder has been authorized to file complaint under section 138 of N.I. Act; The principal of attorney-the proprietor of enterprises Parveen Jain is wife of attorney holder. Being husband he would be having personal knowledge about transaction between complainant and accused. Another ground taken that complaint is not verified or supported by an affidavit, is not tenable because in criminal complaint, there is no need to verify or annex an affidavit in support thereof.
10. In view of what has been discussed above and law on the point, I do not find any ground to interfere with the order impugned and proceedings pending before Court below. Hence this petition is **dismissed**.

(Sanjay Kumar Gupta)
Judge

Jammu:
29.03.2019
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