

M/S SHANKAR FINANCE AND INVESTMENTS

v.

STATE OF ANDHRA PRADESH & ORS.

(Criminal Appeal No. 1449 of 2003)

JUNE 26, 2008

[R.V. RAVEENDRAN AND P. SATHASIVAM, JJ]

Negotiable Instruments Act, 1881:

ss. 138 and 142(a) – Complaint u/s 138 signed by power of attorney-holder of a proprietary concern – Maintainability of – HELD: Power of Attorney Holder can initiate criminal proceedings on behalf of his principal – In a criminal complaint relating to an offence under s.138, it is permissible to lodge complaint in the name of proprietary concern itself – Code of Criminal Procedure, 1973 – ss. 190 and 200.

MMTC Ltd. vs. MEDCHL Chemicals & Pharma (P) Ltd. 2002(1) SCC 234; Associated Cement Co. Ltd. vs. Keshvanand 1998(1) SCC 687; and Ram Chander Prasad Sharma vs. State of Bihar and Anr. AIR 1967 SC 349 – relied on.

Code of Criminal Procedure, 1973:

ss. 190 and 200 – Complaint u/s 138 of Negotiable Instruments Act signed by Power of Attorney Holder on behalf of payee proprietary concern – HELD: Object of s.200 in providing for examination of complainant and his witnesses by Court is to satisfy itself about the existence of a prima facie case against the person accused of offence and to ensure that such person is not harassed by false and vexatious complaints by issue of process – Where proprietor of proprietary concern has personal knowledge of transaction and has signed the complaint, he has to be examined under s.200 of the Code – A Power of Attorney Holder of complainant who does not have personal knowledge, cannot be examined – Where Power of Attorney Holder of complainant is in charge of the business of

- A *payee-complainant and he alone is personally aware of transactions, and complaint is signed by him on behalf of the payee-complainant, he can be examined as the complainant – Negotiable Instruments Act, 1881 – ss. 138 and 142(a).*

- B *Nirmaljit Singh Hoon vs. State of West Bengal 1973(3) SCC 753; and Janki Vashdeo Bhojwani vs. Indusind Bank Ltd. 2005(2) SCC 217 – relied on.*

Practice and Procedure:

- C *Proprietary concern – Initiation of legal proceedings by – Procedure explained – Code of Criminal Procedure, 1973 – ss. 190 and 200 – Negotiable Instruments Act, 1881 – ss. 138 and 142 – Suit.*

Case law reference

- D *MMTC Ltd. vs. MEDCHL Chemicals & Pharma (P) Ltd. 2002(1) SCC 234– relied on. [para 6]*

Associated Cement Co. Ltd. vs. Keshvanand 1998(1) SCC 687– relied on. [para 6]

- E *Ram Chander Prasad Sharma vs. State of Bihar and Anr. AIR 1967 SC 349 – relied on. [para 10]*

Nirmaljit Singh Hoon vs. State of West Bengal 1973(3) SCC 753– relied on. [para 12]

- F *Janki Vashdeo Bhojwani vs. Indusind Bank Ltd. 2005(2) SCC 217 – relied on. [para 12]*

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 1449 of 2003

- G From the Judgment and Order dated 21.8.2002 of the High Court of Judicature Andhra Pradesh at Hyderabad in Crl. Appeal No. 1737 of 2001

L. Roshmani, (for M/s. P.S.N. & Co.) for the Appellant.

- H Prabhakar Rao Voruganti, D. Bharathi Reddy and M.K.

Michael for the Respondents.

The Order of the Court was delivered by

R. V. RAVEENDRAN J. The complainant in a proceedings under section 138 of the Negotiable Instruments Act, 1881 ('Act' for short), challenges in this appeal by special leave, the order dated 21.8.2002 passed by the Andhra Pradesh High Court in Criminal Petition No.1737 of 2001 holding that the complaint signed by a Power of Attorney holder was not maintainable.

2. The appellant – complainant filed a complaint dated 2.4.1996 against respondents 2 to 4 herein (namely M/s Speciality Aqua Ventures Ltd, its Managing Director and Chairman arrayed as accused 1, 2 and 3) alleging that a cheque for Rs.12,40,000/- issued by the third respondent (on behalf of respondents 2 to 4) was dishonoured. Respondents 2 and 4 filed an application seeking discharge. The said petition was dismissed by the learned Magistrate by order dated 17.12.1998. The Revision filed by them against the order of the learned Magistrate was rejected by the Sessions Court on 12.2.2001. Thereafter, the fourth respondent herein (third accused) filed a petition under section 482 Cr.PC for quashing the proceedings. The fourth respondent contended that he could not be arrayed as an accused as the cheque was issued by the third respondent in his individual capacity. The High Court allowed the said petition on a different ground, by order dated 21.8.2002, and quashed the complaint as against the fourth respondent. It held that the complaint was not signed by the payee, that is, the sole proprietor of the payee concern, but was signed by his Power of Attorney Holder and that was not permissible.

3. The said order of the High Court is challenged in this appeal by special leave. By interim orders dated 28.11.2003 and 2.4.2004, this Court stayed the operation of the order of the learned Single Judge and directed that the case should be proceeded with.

A 4. The question that arises for our consideration is whether the complaint under section 138 of the Act signed by a Attorney holder is not maintainable.

B 5. Section 190 of Code of Criminal Procedure ('Code' for short) enables a Magistrate to take cognizance of an offence upon receiving a complaint of facts which constitutes such offence. Section 200 of the Code requires the Magistrate taking cognizance of an offence on complaint, to examine upon oath the complainant and the witness present, if any. Section 142 of the Act provides that notwithstanding anything contained in the
C Code, no Court shall take cognizance of any offence punishable under section 138 of the Act except upon a complaint, *in writing*, made by the *payee* or, as the case may be, *the holder in due course* of the cheque.

D 6. In *MMTC Ltd. vs. MEDCHL Chemicals & Pharma (P) Ltd.* – 2002 (1) SCC 234, a complaint was filed by MMTC Ltd. through the Manager of its Regional Office. Subsequently, the Manager was substituted by Dy. General Manager who was duly authorized. The High Court held that the complaint was not
E maintainable as it was signed and presented by a person, who was neither an authorized agent nor a person empowered under the articles of association or by any resolution of the Board to do so. It held that only the Executive Director of MMTC Ltd had the authority to institute legal proceedings. Reversing the said decision, this Court held :

F "In our view the reasoning given above cannot be sustained. Section 142 of the Negotiable Instruments Act provides that a complaint under section 138 can be made by the payee or the holder in due course of the said cheque.
G The two complaints, in question, are by the appellant company who is the payee of the two cheques.

H This Court has as far back as in the case of *Vishwa Mitter v. O.P. Poddar* - (1983) 4 SCC 701, held that it is clear that anyone can set the criminal law in motion by filing a complaint of facts constituting an offence before a

Magistrate entitled to take cognizance. It has been held that no court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. *It has been held that if any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, then the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the Statute. In the present case, the only eligibility criteria prescribed by Section 142 is that the complaint must be by the payee or the holder in due course. This criteria is satisfied as the complaint is in the name and on behalf of the appellant company.*

(Emphasis supplied)

Referring to the decision in *Associated Cement Co. Ltd. v. Keshvanand* [1998 (1) SCC 687], this Court held :

"It has further been held that no Magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. It has been held that there may be occasions when different persons can represent the company. It has been held that it is open to the de jure complainant company to seek permission of the court for sending any other person to represent the company in the court. Thus, even presuming that initially there was no authority, still the company can, at any stage, rectify that defect. At a subsequent stage the company can send a person who is competent to represent the company. The complaints could thus not have been quashed on this ground."

7. The payee of the cheque is *M/s Shankar Finance & Investments*. The complaint is filed by "*M/s Shankar Finance & Investments*, a proprietary concern of Sri Atmakuri Sankara Rao, represented by its power of Attorney Holder Sri Thamada Satyanarayana". It is therefore evident that the complaint is in

A the name of and on behalf of the payee. Section 142(a) of the
Act requires that no Court shall take cognizance of any offence
punishable under section 138 except upon a *complaint made*
in writing by the payee. Thus the two requirements are that (a)
B the complaint should be made in writing (in contradistinction
from an oral complaint); and (b) the complainant should be the
payee (or the holder in due course, where the payee has en-
dorsed the cheque in favour of someone else). The payee, as
noticed above, is *M/s Shankar Finance & Investments*. Once
the complaint is in the name of the 'payee' and is in writing, the
C requirements of section 142 are fulfilled. Who should represent
the payee where the payee is a company, or how the payee
should be represented where payee is a sole proprietary con-
cern, is not a matter that is governed by section 142, but by the
general law.

D 8. As contrasted from a company incorporated under the
Companies Act, 1956 which is a legal entity distinct from its
shareholders, a proprietary concern is not a legal entity distinct
from its proprietor. A proprietary concern is nothing but an indi-
E vidual trading under a trade name. In civil law where an indi-
vidual carries on business in a name or style other than his own
name, he cannot sue in the trading name but must sue in his
own name, though others can sue him in the trading name. There-
fore, if the appellant in this case had to file a civil suit, the proper
description of plaintiff should be "Atmakuri Sankara Rao carry-
F ing on business under the name and style of *M/s Shankar Fi-*
nance & Investments, a sole proprietary concern". But we are
not dealing with a civil suit. We are dealing with a criminal com-
plaint to which the special requirements of section 142 of the
Act apply. Section 142 requires that the complainant should be
G payee. The payee is *M/s Shankar Finance & Investments*. There-
fore in a criminal complaint relating to an offence under section
138 of the Act, it is permissible to lodge the complaint in the
name of the proprietary concern itself.

H 9. The next question is where a proprietary concern car-
ries on business through an attorney holder, whether the attor-

ney holder can lodge the complaint? The attorney holder is the agent of the grantor. When the grantor authorizes the Attorney Holder to initiate legal proceedings and the attorney holder accordingly initiates legal proceedings, he does so as the agent of the grantor and the initiation is by the grantor represented by his attorney holder, and not by the attorney holder in his personal capacity. Therefore where the payee is a proprietary concern, the complaint can be filed : (i) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the 'payee'; (ii) The proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (iii) the proprietor or the proprietary concern represented by the attorney-holder under a power of attorney executed by the sole proprietor. It follows that in this case the complaint could have been validly filed by describing the complainant in any one of the following four methods :

"Atmakuri Shankara Rao, sole proprietor of M/s. Shankar Finance & Investments"

Or

"M/s. Shankar Finance & Investments a sole proprietary concern represented by its proprietor Atmakuri Shankara Rao"

Or

"Atmakuri Shankara Rao, sole proprietor of M/s. Shankar Finance & Investments, represented by his Attorney Holder Thamak Satyanarayana"

Or

"M/s. Shankar Finance & Investments, a proprietary concern of Atmakuri Shankara Rao, represented by his Attorney Holder Thamada Satyanarayana".

What would have been improper is for the Attorney holder Thamada Satyanarayana to file the complaint in his own name as if he was the complainant.

A 10. This Court has always recognized that the power of
attorney holder can initiate criminal proceedings on behalf of
his Principal. In *Ram Chander Prasad Sharma v. State of Bihar*
and *Anr.* [AIR 1967 SC 349], the prosecution was commenced
B in regard to tampering of electric meter seals, with a charge
sheet submitted by the police after investigation on a first infor-
C mation report by one Bhattacharya, Mains Superintendent of
Patna Electric Supply Co. ('PES Co.' for short). An objection
was raised by the accused that the prosecution was incompe-
tent as it was not launched by a person competent to do so. The
D said objection was based on section 50 of the Indian Electricity
Act, 1910, which provided that no prosecution shall be insti-
tuted against any person for any offence against that Act or any
rule, licence or order thereunder, except at the instance of the
Government or an Electric Inspector, or of a person aggrieved
by the same. This Court held :

"... The P.E.S. Co., however, is a body corporate and
must act only through its directors or officers. Here we
have the evidence of Ramaswami to the effect that he
held a general power of attorney from the P.E.S. Co., and
E that he was specifically empowered thereunder to act on
behalf of P.E.S. Co., in all legal proceedings. The
evidence shows that it was at his instance that
Bhattacharya launched that first information report and,
therefore, it would follow that the law was set in motion by
F the "person aggrieved". The objection based on Section
50 must, therefore, be held to be untenable."

(emphasis supplied)

11. The assumption of the High Court that where the payee
G is a proprietary concern, the complaint can be signed only by
the proprietor of the proprietary concern and not by a Power of
Attorney holder of the proprietor, is not sound. It is not in dispute
that in this case a power of attorney has been granted by
Atmakuri Shankara Rao, as Proprietor of M/s Shankar Finance
& Investments in favour of Thamada Satyanarayana and the
H

same was produced along with the complaint. The description of the complainant is as under : A

"M/s Shankar Finance and Investments, (a proprietary concern of Sri Atmakuri Sankara Rao S/o Late Sri A. B. Rama Murthy, Hindu, aged about 65 years), having its office at Flat No.3B, Third Floor, Maharaja Towers. Vishakhapatnam – 3 represented by its Power of Attorney Holder Sri Thamada Satyanarayana, S/o Late Adinarayana, Hindu, aged 50 years, Service, residing at MIG-B-230, Sagarnagar, VUDA Layout, Vishakhapatnam – 43." B C

The said description is proper and therefore, the complaint has been duly filed by the payee.

12. The High Court has referred to the fact that the sworn statement before the learned Magistrate was of the attorney holder of the payee and not by the payee in person. According to the tenor of the order of the High Court, this was also irregular. But we find nothing irregular in such a procedure. It is now well settled that the object of section 200 of the Code in providing for examination of the complainant and his witnesses by the court is to satisfy itself about the existence of a prima facie case against the person accused of the offence and to ensure that such person is not harassed by false and vexatious complaints by issue of process; (See *Nirmaljit Singh Hoon v. State of West Bengal* – 1973 (3) SCC 753). Where the proprietor of the proprietary concern has personal knowledge of the transaction and the proprietor has signed the complaint, he has to be examined under section 200 of the Code. A power of attorney holder of the complainant who does not have personal knowledge, cannot be examined. But where the attorney holder of the complainant is in charge of the business of the payee-complainant and the Attorney holder alone is personally aware of the transactions, and the complaint is signed by the attorney holder on behalf of the payee-complainant, there is no reason why the attorney holder cannot be examined as the complainant. We may, in D E F G H

A this connection, refer to the decision of this Court in *Janki Vashdeo Bhojwani v. Indusind Bank Ltd.* [2005 (2) SCC 217], where the scope of an attorney holder 'acting' on behalf of the principal in a civil suit governed by Code of Civil Procedure was examined. This Court observed:

B "Order 3 Rules 1 and 2 CPC empower the holder of power
of attorney to "act" on behalf of the principal. In our view
the word "acts" employed in Order 3 Rules 1 and 2 CPC
confines only to in respect of "acts" done by them power-
of-attorney holder in exercise of power granted by the
C instrument. The term "acts" would not include deposing in
place and instead of the principal. In other words, if the
power-of-attorney holder has rendered some "acts" in
pursuance of power of attorney, he may depose for the
principal in respect of such acts, but he cannot depose
D for the principal for the acts done by the principal and not
by him. Similarly, he cannot depose for the principal in
respect of the matter of which only the principal can have
a personal knowledge and in respect of which the principal
is entitled to be cross-examined."

E [Emphasis supplied]

The principle underlying the said observations will apply
to cases under section 138 of the Act. In regard to business
transactions of companies, partnerships or proprietary con-
F cerns, many a time the authorized agent or attorney holder may
be the only person having personal knowledge of the particular
transaction; and if the authorized agent or attorney-holder has
signed the complaint, it will be absurd to say that he should not
be examined under section 200 of the Code, and only the Sec-
G retary of the company or the partner of the firm or the proprietor
of a concern, who did not have personal knowledge of the trans-
action, should be examined. Of course, where the cheque is
drawn in the name of the proprietor of a proprietary concern,
but an employee of such concern (who is not an attorney holder)
H has knowledge of the transaction, the payee as complainant

and the employee who has knowledge of the transaction, may both have to be examined. Be that as it may. In this case we find no infirmity. A

13. We, accordingly, allow this appeal, set aside the impugned order dated 21.8.2002 and direct the learned Magistrate to proceed with the complaint as already directed by the interim order. B

R.P.

Appeal allowed.