

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ **W.P.(CRL.) 1239/2013 and CRL.M.A. 11559-11560/2013**

Decided on 17.09.2013

IN THE MATTER OF :

JASBIR SINGH

..... Petitioner

Through: Mr. Guru Krishna Kumar, Senior
Advocate with Mr. Himanshu Gupta, Advocate

versus

DY COMMISSIONER OF POLICE CRIME BRANCH (EOW) Respondent
Through: Mr. Pawan Sharma, Standing Counsel
(Crl.), GNCTD with Mr. Sahil Mongia and Ms. Priyanka
Kapoor, Advocates

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (Oral)

1. The present writ petition has been filed by the petitioner under Article 226 of the Constitution of India read with Section 482 Cr.PC praying *inter alia* for quashing of FIR No.133/2013 lodged under Sections 420/467/468/471/120-B IPC at Police Station: Kalkaji, New Delhi.

2. The prayers made in the present petition are premised on an argument that any FIR registered on the complaint of a General Power of Attorney holder of the complainant, in the absence of knowledge of the subject matter of the complaint attributable to the Power of Attorney holder, ought not to be entertained and in the present case, as the subject FIR has

been registered by the police on a complaint received from Mr. Gurdip Singh Samagh, General Power of Attorney holder of Mrs. Balbir Kaur and Mrs. Jasbir Kaur, both residents of Ontario, Canada, against the petitioner and his two sons, Navrinder Singh and Harvinder Singh in respect of a residential premises bearing No.E-88, Kalkaji, New Delhi, the same ought to be quashed.

3. Mr. Guru Krishna Kumar, Senior Advocate appearing for the petitioner submits that the aforesaid issue came up for consideration before the Supreme Court in a recent decision dated 13.09.2013 in **Criminal Appeal No.73/2007** entitled A.C. Narayanan vs. State of Maharashtra & Anr. He has also placed reliance on an earlier decision of the Supreme Court in the case of Man Kaur (Dead) by LRs vs. Hartar Singh Sangha reported as **(2010) 10 SCC 512** to urge that personal knowledge of the attorney holder is a pre-requisite for giving evidence.

4. Before considering the aforesaid proposition canvassed on behalf of the petitioner, it is considered necessary to briefly recapitulate the facts of the case as culled out from the status report filed by the State.

5. In the month of November, 2012, a complaint had been filed in the EOW, Crime Branch, Delhi by Mr.Gurdip Singh Samagh, power of attorney of Mrs.Balbir Kaur and Mrs.Jasbir Kaur, that their father, Dr.Tara Singh had purchased the subject premises in the year 1962 and he was living in the

said premises with his family comprising of his wife and three daughters, namely, Balbir Kaur, Jasbir Kaur and Kawalbir Kaur. In the year 1973, Dr.Tara Singh alongwith his family had migrated to Canada and he had rented out the subject property to one Mr. Lamba. In the year 1980, the petitioner herein had taken over possession of the premises from Mr. Lamba as a tenant and he had extended an assurance to Dr. Tara Singh that he would vacate the same as soon as he gets possession of a DDA flat, that he had applied for. However, the petitioner failed to vacate the said premises.

6. In the meantime, Dr. Tara Singh, who became a permanent resident in Canada, authorized his nephew to find a suitable buyer for the aforesaid premises but the Sale Deed could not be executed due to the hurdles allegedly created by the petitioner. As per the complainant, Dr. Tara Singh and his family members had not visited India after the year 1976. On 11.11.1991, Dr. Tara Singh expired in Canada and was survived by his wife and three daughters. His wife had expired on 07.01.2001 and the third daughter, Kawalbir Kaur also expired on 03.10.2008 in Canada. Even after the demise of Dr. Tara Singh, the petitioner did not vacate the premises and he kept on contacting Ms. Balbir Kaur and Ms. Jasbir Kaur persuading them to sell the property to him.

7. As per the complainants, in the year 2012, when they were planning to visit India, they had requested the petitioner to vacate the subject property

but he had refused to do so and instead had asserted that he is the legal owner thereof. In view of the aforesaid stand taken by the petitioner, the legal heirs of Dr. Tara Singh were compelled to file the present complaint through Mr. Gurdip Singh Samagh, brother-in-law of Ms. Balbir Kaur, resulting in registration of the subject FIR.

8. Counsel for the petitioner disputes the facts set out in the status report and submits that the stand of the petitioner is that in the year 1988, the subject property had been sold to him by Dr. Tara Singh for valuable consideration and the complaint lodged against him is baseless.

9. Learned Standing Counsel (Crl.), Govt. of NCT of Delhi states that the investigations in the case are under progress and in the course of the said investigation, documents pertaining to the subject premises were asked for from the L&DO. In reply, the L&DO had informed that the name of Dr. Tara Singh had been substituted by the name of the petitioner herein on 23.06.1995 on the basis of five documents that were submitted by the petitioner, namely, a death certificate, two wills allegedly executed by Dr. Tara Singh and no objection certificates issued by his legal heirs. However, as none of the aforesaid documents were stated to be available in the main file, the L&DO had supplied copies of the noting file that corroborated the aforesaid version. The L&DO also informed the Investigating Officer that on

a complaint received from the Power of Attorney holder of the legal heirs of Dr. Tara Singh, an enquiry was being conducted in the matter.

10. It is an admitted position that on 10.04.2013, the L&DO had proceeded to cancel the substitution letter dated 23.06.1995 and the Conveyance Deed dated 17.10.1995 executed in favour of the petitioner herein. Aggrieved by the aforesaid cancellation order, the petitioner had filed a writ petition in this Court, registered as W.P.(C) 3841/2013, which came to be disposed of vide order dated 31.05.2013, directing *inter alia* that the L&DO should consider the petitioner's representation and pass a speaking order. This Court is informed that the L&DO has passed a speaking order dated 30.07.2013, rejecting the petitioner's representation and maintaining the cancellation order. Aggrieved by the aforesaid order, the petitioner is stated to have filed a second writ petition, which is pending consideration.

11. To consider the argument advanced on behalf the petitioner that the Power of Attorney holder of the complainants cannot file a complaint and an FIR ought not to have been registered on the basis of such a complaint, this Court has perused the decisions cited by the learned counsel for the petitioner. In the case of Man Kaur (supra), the Supreme Court had taken note of its earlier decision in the case of Shankar Finance & Investments vs. State of A.P. reported as **2008(8) SCC 536** wherein while dealing with a

complaint under Section 138 of the Negotiable Instruments Act, signed by the Attorney holder of the payee, the Court had explained the circumstances in which the evidence of the Attorney holder would be relevant and in that context, it had observed that the 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 Incharge of the business of the complainant and is personally aware of the transaction, there is no reason why he cannot be examined as the complainant.

12. The decision in the case of Shankar Finance (supra) was discussed by the Supreme Court in the case of Man Kaur(supra), in the context of a civil suit instituted for specific performance, where the pre-requisites required to be fulfilled by the complainant to succeed in such a suit were laid down and it was observed that the plaintiff in such a suit cannot examine his attorney holder in his place, when the attorney holder did not have personal knowledge either of the transaction or of his readiness and willingness for the reason that "readiness and willingness" refer to the state of mind and conduct of the purchaser as also his capacity and preparedness etc. and one without the other will not suffice and, therefore, a third party, who does not have personal knowledge cannot give evidence about such "readiness and willingness" even if he is an attorney holder of the person concerned. The position as to who could give evidence with regard to matters involving

personal knowledge was succinctly summarized by the Supreme Court in para 18 of the aforesaid judgment.

13. In the present case, Mr. Guru Krishna Kumar , learned Senior Advocate appearing for the petitioner refers on clause (c) of para 18 of the aforesaid judgment to urge that the attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which the latter alone has personal knowledge and therefore contends that the complaint lodged by Mr. Gurdip Singh Samagh on behalf of the two daughters of late Dr.Tara Singh could not have been registered by the police as a FIR.

14. Having perused the decision in the case of Man Kaur (supra), this court is of the opinion that it does not have any application to the facts of the present case, where no occasion has arisen requiring evidence to be recorded at the instance of the Power of Attorney holder with regard to the matters involving the personal knowledge of Mrs.Balbir Kaur and Mrs.Jasbir Kaur. There cannot be any comparison between the power of attorney holder of a complainant in a criminal case and the power of attorney holder in a civil proceeding where specific performance of a contract is prayed for and the Court has to satisfy itself about the readiness and willingness of the purchaser for purposes of granting appropriate relief. Similarly, the power of

attorney holder of a complainant invoking the provisions of Section 138 of the Negotiable Instruments Act, which is a special statute, is on an entirely different footing from a power of attorney holder of a complainant under the Cr.PC.

15. As regards the decision of the Supreme Court in the case of A.C. Narayanan (supra), in the aforesaid case, a three Judges' Bench was required to interpret the provision of Section 142(a) of the Negotiable Instruments Act in view of the difference of opinion expressed by various High Courts as also by the Supreme Court in the cases of MMTC and Anr. Vs. Medchl Chemicals & PHarma (P) Ltd. and Anr. reported as **(2002) 1 SCC 234** and Janki Vashdeo Bhojwani and Anr. Vs. Indusind Bank Ltd. and Ors. reported as **2005(2) SCC 217**. The order of reference that had engaged the Supreme Court in the aforesaid case was the interpretation and/or application of Section 142(a) of the Negotiable Instruments Act. After examining the divergent views expressed by different High Courts on the question of power of attorney and noting the fact that there was a conflict of opinion on the aforesaid issue, the Supreme Court had referred to the provisions of Sections 138 and 142(a) of the Negotiable Instruments Act and framed the following five questions, which they were required to deliberate upon and answer:-

- “(i) Whether a Power of Attorney holder can sign and file a complaint petition on 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 verified 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?

16. Mr. Guru Krishna Kumar, learned Senior Advocate appearing for the petitioner relies on the response given by the Supreme Court to question No.(iii) framed above, which was as follows:

“26. (i) XXX

(ii) XXX

(iii) It is required by the complainant to make specific assertion as to the knowledge of the Power of Attorney holder in the said transaction explicitly in the complaint and the Power of Attorney holder, who has no knowledge regarding the transactions cannot be examined as a witness in the case.”

17. The petitioner herein cannot take any benefit from the aforesaid decision, which is based on a different set of facts and that too in respect of a special statute like the Negotiable Instruments Act relating to disposal of cases of dishonoured cheques and other negotiable instruments, the purview whereof is entirely different from the case in hand where the provisions of Sections 420/467/468/471/120B IPC have been invoked by the complainant. In the course of arguments, learned Standing Counsel(Crl.) has handed over two affidavits, both dated 17.09.2013 and sworn and signed by Smt. Balbir Kaur and Smt. Jasbir Kaur, residents of District Ontario, Canada, confirming *inter alia* that they have executed the General Power of Attorney dated 10.10.2012 authorizing Shri Gurdip Singh Samagh as their Special Attorney in respect of the subject premises. He submits that the argument urged by the other side about the maintainability of the FIR merely because the same has been got registered at the instance of the Power of Attorney holder of the complainants has been well answered by the Supreme Court in the case of Vishwa Mitter of Vijay Bharat Cigarette Stores, Dalhousie Road, Pathankot vs. O.P. Poddar and Ors. reported as **1983 (4) SCC 701**, whereunder, it was held 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 under Section 190 Cr.PC. unless any special qualification has

been prescribed by any statutory provision. The aforesaid provision is reproduced hereinbelow for ready reference:

"190. Cognizance of offences by Magistrates-(1)

Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section(2), may take cognizance of any offence-

upon receiving a complaint of facts which constitute such offence;

upon a police report of such facts;

upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section(1) of such offences as are within his competence to inquire into or try."

18. In contrast to Section 190 contained in the Cr.PC., an enactment like the Negotiable Instruments Act is on a different footing. The said Statute is a special enactment dealing with the law relating to promissory notes, bills of exchange and cheques and it prescribes the manner of filing a complaint, trying the same and dealing with the offence mentioned therein. However, where there is no special Statute involved, the provisions of the Cr.PC shall apply in respect of such offences that find mention in the IPC and unless prescribed otherwise, all the said offences are required to be investigated, tried and dealt with in accordance with the provisions of the said statute.

19. It need not be emphasized that ordinarily, for an offence mentioned in the IPC, just any and every one can set the criminal law in motion, subject to the provisions of chapter XIV of the Cr.PC, where the qualification of the complainant is prescribed and in such a case, the complainant must satisfy the eligibility criteria. However, in the absence of any such special qualification/specification prescribed, the court cannot throw out a complaint or decline to take cognizance merely on the ground that the complainant is incompetent to file the complaint. In this context, it is apposite to refer to the following observations made by the Supreme Court in the case of Vishwa Mitter(supra) that hold good till date:-

"4..... It would follow as a necessary corollary that unless in any statute other than the Code of Criminal Procedure which prescribes an offence and simultaneously specifies the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences, the provisions of the Code of Criminal Procedure shall apply in respect of such offences and they shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code of Criminal Procedure. One such provision in the Code of Criminal Procedure is Sec. 190 which empowers any Magistrate of the class specified therein to take cognizance of any offence upon receiving a complaint of facts which constitutes such offence. Therefore, from a combined reading of Sec. 4(2) with Sec. 190 of the Code of Criminal Procedure, it transpires that upon a complaint filed by a person setting-out facts therein which constitutes the offence before a Magistrate specified in Sec. 190 the Magistrate will be competent to take cognizance of the offence irrespective of the qualifications or eligibility of the complainant to file the complaint. It must, however, be conceded that where a provision to the

contrary is made in any statute, which may indicate the qualification or eligibility of a complainant to file the complaint, the Magistrate before taking cognizance is entitled and has power to inquire whether the complainant satisfies the eligibility criteria.

5. It is thus crystal 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 under Sec. 190 and unless any statutory provision prescribes any special qualification or eligibility criteria for putting the criminal law in motion, no Court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. Sec. 190 of the Code of Criminal Procedure clearly indicates that the qualification of the complainant to file a complaint is not relevant. But where any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute. **Even with regard to offences under the Indian Penal Code, ordinarily, anyone can set the criminal law in motion but the various provisions in Chapter XIV prescribe the qualification of the complainant which would enable him or her to file a complaint in respect of specified offences and no Court can take cognizance of such offence unless the complainant satisfies the eligibility criterion, but in the absence of any such specification, no Court can throw-out the complaint or decline to take the cognizance on the sole ground that the complainant was not competent to file the complaint.**"(emphasis added)

20. In the present case also, the provisions of the Cr.PC. apply in respect of the offences mentioned in the FIR and merely because the complainants, who are both residents of Canada are not in a position to personally travel to India to lodge their complaint and pursue the same with the police cannot be

a ground to seek quashing of the FIR, registered on the complaint of their Power of Attorney holder.

21. As regards the merits of the case, it has been noted hereinabove that the L&DO has already cancelled the substitution letter dated 23.06.1995 issued in favour of the petitioner as also the Conveyance Deed dated 17.10.1995. The Court has been informed by the Standing Counsel (Crl.) that after the subject premises was transferred in favour of the petitioner in October 2012, he had executed a Gift Deed in favour of one of his sons namely, Mr. Navrinder Singh and Mr. Navrinder Singh had in turn executed a Gift Deed in respect of the subject premises in favour of his brother, Mr. Harvinder Singh. It is also relevant to note that Mr. Navrinder Singh, who was not left with any right, title or interest in the subject property after October 2012, had filed a writ petition seeking quashing of the very same FIR, registered as W.P.(CRL) 975/2013 and after addressing arguments for some time, when learned counsel for the said petitioner had not succeeded in persuading the court, he had sought leave to withdraw the said petition.

22. In view of the aforesaid discussion, this Court is of the opinion that on a prima facie reading of the FIR and the sequence of events pointed out by the State on the basis of investigations undertaken till now, it is not inclined

to entertain the present petition for seeking quashing of the subject FIR. The petition is found to be devoid of merits and is accordingly dismissed.

SEPTEMBER 17, 2013
rkb/mk

(HIMA KOHLI)
JUDGE