

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

Crl.Rev.Pet.No. 476 of 2004 (D)  
-----

AGAINST THE JUDGMENT IN CRL.APPEAL 353/2003 of ADDITIONAL SESSIONS  
JUDGE (SPL.COURT), KOTTAYAM DATED 20-12-2003

AGAINST THE JUDGMENT IN CC 1171/2001 of JUDICIAL FIRST CLASS  
MAGISTRATE COURT-I, KOTTAYAM DATED 19-07-2003

REVISION PETITIONER(S)/APPELLANT/ACCUSED:  
-----

P.N.SUKUMARAN,  
VADAKKEDATHU, DEVAGIRI P.O.KANGAZHA,, KOTTAYAM..

BY ADV. SRI.M.J.THOMAS

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:  
-----

1. K.N.MADHAVAN NAIR, SREE NIKETHAN,  
POTHAKUZHY, KANGAZHA, REPRESENTED BY, POWER OF ATTORNEY  
HOLDER R.RENJITH, CHENNAMKULATHU HOUSE, PULICKAL KAVALA,  
P.O.VAZHOOR, KOTTAYAM.
2. THE STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA,, ERNAKULAM.

ADDL.R3: R. RANJITH, CHENNAMKULATH HOUSE  
PULICKAL KAVALA P.O.,  
VAZHOOR, KOTTAYAM  
(IMPLEADED AS PER ORDER DATED 03.07.2015 IN  
CRL.M.A.3624/15 IN CRL. R.P. 476/2004.)

R, BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD  
ON 14-12-2015, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

acd

'C.R.'

**P.D. RAJAN, J.**

-----  
Crl.R.P.No.476 of 2004  
-----

Dated this the 14<sup>th</sup> day of December, 2015

**ORDER**

This revision petition is preferred by the accused against the concurrent judgment in Crl.Appeal No.353/2003 of Additional Sessions Judge, Kottayam. He was accused in C.C.No.171/2001 of the Judicial First Class Magistrate Court-I, Kottayam for offence punishable u/s.138 of the N.I. Act. The complainant is the 1<sup>st</sup> respondent in this revision petition, his case is that the accused borrowed a sum of ₹3,72,000/- from him and in discharge of that debt, accused issued Ext.P1 cheque. When it was presented for encashment, it was dishonoured for the reason of funds insufficient. The complainant demanded the amount by giving a notice in

writing. Even after receipt of notice, there was no repayment. In the circumstances, the above complaint was filed in the trial Court.

2. During trial, complainant examined his power attorney holder as PW1 and Exts.P1 to P10 were marked as his documentary evidence. The accused denied the transaction and examined DW1 and marked Ext.D1. The learned Magistrate convicted the accused and sentenced to simple imprisonment for one month u/s.138 of the N.I. Act and compensation of ₹3,72,000/- u/s.357(3) Cr.P.C. with a default sentence of simple imprisonment for three months. Against that, he preferred Crl.Appeal No.353/2003 before Additional Sessions Judge (Spl), Kottayam and that Court dismissed the appeal. Being aggrieved by that, the accused preferred this revision petition.

3. Sri. M.J. Thomas, the learned counsel appearing for

the revision petitioner contended that both courts below did not consider the legal points highlighted by the revision petitioner. There is misreading of evidence which resulted in miscarriage of justice. Both courts were under the impression that the power of attorney holder has direct knowledge regarding the transaction with the revision petitioner.

4. I have also heard the learned Public Prosecutor. Notice to R1 was served through Sub Inspector of Police, Pallikkathodu, but, there was no representation for R1.

5. The first question to be considered in this case is whether the Power of Attorney holder who filed the complaint had direct knowledge with regard to the transaction. In Janki Vashdeo Bhojwani v. Indus Bank Ltd [2005(2) SCC 217] Apex Court held that the power of attorney holder under CPC has to act on behalf of the principal.

Therefore 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. But the well settled earlier position in Vishwa Mitter v. O.P. Poddar [(1983) 4 SCC 701] was that criminal law can be put in motion by anyone. But in MMTC Ltd v. Medchi Chemicals and Pharma (P) Ltd, [2002 SCC (Cri) 121] 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. Apex Court in A.C. Narayanan v. State of Maharashtra [ 2014 (11) SCC 790] held as follows:

"28. The power of attorney holder is the agent of the grantor. When the grantor authorises the attorney holder to initiate legal proceedings and the attorney holder accordingly initiates such 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 by the proprietor of the proprietary concern, describing himself as the sole proprietor of the payee, the proprietary concern, describing itself as a sole proprietary concern, represented

by its sole proprietor, and the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor. However, we make it clear that the power of attorney holder cannot file a complaint in his own name as if he was the complainant. In other words, he can initiate criminal proceedings on behalf of the principal.

xxx xxxx xxxxx

30. 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 NI Act. An exception to the above is when the power of attorney holder of the complainant does not have a personal knowledge about the transaction 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."

6. Eligibility criteria prescribed by S.142(a) of the NI Act for taking cognizance has been explained by the Apex Court in the above decision. Firstly, the Power of attorney holder has the right to file a complaint u/s.138 of the N.I. Act and he can appear and depose for issue of process for offence punishable thereunder. Therefore a complaint signed

and filed through power of attorney holder on behalf of the complainant is valid according to the above conditions. The power of attorney holder is the agent of the complainant. When complainant authorizes the power of attorney holder to initiate legal proceedings against the accused and the attorney holder accordingly initiates such legal proceedings, he does those work as the agent of the complainant and the complainant is represented by his attorney holder alone and not by the attorney holder in his personal capacity. A complaint by the attorney holder under a power of attorney executed by the complainant is lawful. However, I make it clear that the power of attorney holder can depose and verify the complaint and prove the content of the complaint provided he must have witnessed the transaction as an agent of the payee or holder in due course and knowledge regarding the transaction. A general power of attorney holder cannot

appear as a witness on behalf of the complainant, if he has no direct knowledge with regard to the transaction. But the eligibility criteria preferred u/s.142(a) of the N.I. Act would stand satisfied and the complainant in his petition has to mention the transaction.

7. The evidence of PW1 shows that the revision petitioner borrowed a sum of ₹3,72,000/- from him and in discharge of that debt, he issued Ext.P1 cheque. During cross examination PW1 admitted that he has no direct knowledge about the transaction between his grandfather and the revision petitioner. But the revision petitioner contended that he had borrowed one lakh rupees from the complainant in March 1997 and repaid by monthly instalments at the rate of ₹10000/- per month and closed account in March 1998. As a security, two signed blank cheques were entrusted and misusing one of the cheque leaves he foisted this case.

When PW1 had no direct knowledge with regard to this transaction, his evidence as the power of attorney holder is not acceptable for a conviction. When cheque was presented for encashment, it was dishonoured for the reason of funds insufficient and Ext.P2 is the dishonour memo etc are admitted facts. Ext.P3 is the intimation and thereafter demanded the amount by giving a lawyer notice. In the trial Court, the copy of the lawyer notice, the postal receipt and the acknowledgment card were marked as Exts.P4, P5 and P6. On a perusal of the evidence of PW1, it is clear that he has no direct knowledge with regard to the transaction. Sri. K.N. Madhavan Nair is the payee and the power of attorney had no direct knowledge about the amount. However, the admission of signature in Ext.P1 is not sufficient to draw a presumption under S.139 of the N.I. Act.

8. Apex Court in **John K. Abraham v. Simon C. Abraham**

[2014 (1) KLT 90(SC)] held that in order to draw the presumption under Section 118 read along with 139 of the Negotiable Instruments Act, the burden was heavily upon the complainant to have shown that he had required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant. The revision petitioner was examined as DW1 in the trial Court and marked Exts.D1 and D2 and contented that he borrowed only one lakh rupees which was repaid. Therefore, in order to draw a presumption under Section 118 read along with 139 of the Negotiable Instruments Act, the burden was heavily upon the power of attorney holder to show that the payee had required funds for advancing the amount to the accused and he issued the cheque in support of the said payment. The oral evidence of

PW1 shows that he had no knowledge with regard to the principal amount or debt amount. But, he admitted that the cheque amount includes the principal amount and interest. This would show that the power of attorney holder had no direct knowledge with regard to the payment of debt amount. When power of attorney holder is not aware of the transaction and the details as to when and where the transaction took place and for which amount the cheque in question was issued by the accused, I am of the view that the complainant failed to prove that the cheque was issued in discharge of a debt or liability.

In the result, the conviction and sentence passed by the trial Court u/s.138 of the N.I. Act are set aside and the accused is acquitted and set at liberty.

The Crl. Revision Petition is allowed.

**P.D. RAJAN, JUDGE.**