

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ **CRL.REV.P. 683/2015**

Date of Reserve: 07.01.2016

Date of decision: 13.01.2016

M/S.JANE NORMAN RETAIL PVT LTD
& ANR.

... PETITIONERS

Through: Mr.K.K.Sharma and Mr.Vipin Rathi,
Advocates.

versus

STATE (NCT OF DELHI) & ANR. RESPONDENTS

Through: Ms. Rajni Gupta, APP.
Mr.Vikas Bhatia, Advocate for the
respondent No.2.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR , J.

1. The petitioner stands convicted and sentenced by the Trial Court in CC No.3771/01/11 under Section 138 of the N.I Act and has been directed to undergo RI for six months, pay a compensation of Rs.11,50,000/- to the complainant and in case of failure in paying the said amount, to further suffer SI for two months by judgment and order dated 20.02.2014 and 23.07.2015. The petitioner preferred an appeal against the aforesaid judgment and order of conviction of the Trial Court vide Crl.Appeal No.53/2015 before the District and Sessions Judge, West Delhi. The Appellate Court vide order dated 07.09.2015 affirmed the judgment and order on sentence passed by the Trial Court and dismissed the appeal.

2. Hence the present revision petition.
3. Respondent No.2 Smt.Pushpa Gupta, proprietor of M/s.D.V.Trading Company through her special power of attorney holder and son, Manan Gupta, filed a complaint under Section 138 of the N.I Act alleging that she had business relationship with the petitioners and that she had started a franchise showroom of the petitioners at Paschim Vihar. Since the showroom could not be run properly, it had to be shut down. As per the agreement between the complainant and the petitioners, towards full and final settlement of all dues, the petitioners had issued a cheque bearing No.029731 dated 30.07.2011 for Rs.8,75,307 drawn on Axis Bank, Mansarovar Garden, New Delhi in favour of the firm of the complainant. When the aforesaid cheque was presented before the bank for encashment, the same was returned for insufficiency of funds. A legal notice was sent to the petitioners on 17.08.2011 at two addresses namely at Mansarovar Garden and Ashok Vihar but the same was refused to be accepted. The notice sent at Mansarovar Garden address was refused to be accepted by the petitioners but the notice at Ashok Vihar was delivered to the petitioners on 19.08.2011. Despite service of notice, the petitioners did not pay the cheque amount.
4. The aforesaid complaint has been signed by the complainant Smt.Pushpa Gupta and her son and power of attorney holder, Manan Gupta. An affidavit accompanied the complaint of Manan Gupta, the Special Power of Attorney holder.
5. Petitioner No.2 was produced in custody pursuant to the summons as he was in judicial custody in some other case. Notice

under Section 251 of the Code of Criminal Procedure was served upon him. No prayer was made on his behalf for summoning and examining either the complainant or her son, the power of attorney holder. The petitioner was thereafter directed to lead defence evidence. No evidence was led by the petitioner despite several adjournments.

6. The evidence of the complainant had been tendered through her special power of attorney by way of an affidavit (Ex.CW-1/1). Since no material came forward, the requirement of recording the statement of the petitioner under Section 313 of the Code of Criminal Procedure was also waived.

7. The Trial Court, thereafter, on the admission of the accused about his signature on the cheque in question held that the presumption under Section 118 and 139 of the N.I.Act operated against him and the same could not be rebutted.

8. A complaint was raised by the petitioner that he had not been served with any demand notice and, therefore, no cause of action accrued against him. The aforesaid contention was seriously disputed on behalf of the complainant. The plea of no opportunity to him for cross examining the complainant or for leading defence evidence was not accepted by the Trial Court. Thus the petitioner was convicted and sentenced as aforesaid.

9. The Appellate Court took note of the fact that an application under Section 145(2) of the N.I Act was filed by the petitioner at the time when the case was listed for final arguments and, therefore, the prayer made on his behalf was rejected by the Trial Court on 09.09.2013. The petitioner challenged the aforesaid order by way of

criminal revision No.134/2013 before ASJ-01, West, which too was dismissed. As against the aforesaid dismissal by the Revisional Court, CrI.M.C No.273/2014 was preferred before the High Court of Delhi, which too was dismissed on 20.01.2014. The High Court was of the view that there was no justifiable reason for not filing any application under Section 145(2) of the N.I.Act, 1881 at the stage of notice and, therefore, came to the opinion that it was a dilatory tactics of the petitioner to delay the disposal of the case.

10. Learned counsel appearing for the petitioner has submitted that since the complaint was filed by the special power of attorney holder who did not have any personal knowledge about the transaction alleged between the complainant and the accused, the same was not maintainable and, therefore, the entire prosecution of the petitioner is vitiated. It has been submitted that neither in the complaint petition nor in the special power of attorney, is it mentioned that the special power of attorney had personal knowledge of the transaction between the accused and the complainant.

11. A perusal of the complaint shows that the same was signed by the complainant Smt.Pushpa Gupta. The special power of attorney holder of the complainant namely Manan Gupta also appears to be aware of the transaction between the parties which is evident from Ex.CW-1/H which is a document of settlement between the parties. The aforesaid document has been signed by the attorney and the petitioner. Thus the contention of the petitioner that the attorney did not have any complete knowledge about the transaction between the parties cannot be accepted. The grievance of the petitioner about not

having been provided with the opportunity of defending his case or defending himself is also untenable as no attempt was made by him or on his behalf to cross examine the complainant or the special power of attorney holder. At a much belated stage, a bleak attempt was made to ask for cross examining the complainant but considering it to be an attempt to delay the trial, such a prayer was rejected. The challenge to such a rejection order also could not be sustained.

12. The petitioner, therefore, has left undisputed the fact that the cheque in question was signed by him. Thus the presumption under Sections 118B and 139 of the N.I.Act directly applies to the facts of this case.

13. At the stage of notice under Section 251 of the Code of Criminal Procedure, the petitioner had, though, accepted that the cheque in question was signed by him but denied of having filled up the other particulars. Such a denial cannot be accepted. Whenever a person signs a cheque and delivers it to the payee, presumption under Section 118B and 139 of the N.I.Act has to be raised and in the absence of any attempt to rebut the same, it stands admitted.

14. In *A.C.Narayanan vs State of Maharashtra & Anr*, 2013 (4) JCC (NI) 214: (2014) 11 SCC 790, the Supreme Court has held that a Magistrate has the power to issue process on the basis of 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 the issuance of the process under Section 200 of the Code of Criminal Procedure, it is open for a Magistrate, if he thinks fit, to call upon the

complainant to remain present or to examine him as to the facts contained in the affidavit submitted by him in support of his complaint. Such is but only a matter of discretion and a Magistrate is not bound to call upon the complainant to remain present before the Court and to examine him upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the Negotiable Instruments Act.

15. While dealing with the position of a power of attorney holder, the Supreme Court in A.C.Narayanan (Supra) had stated:-

“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.....”
(Emphasis Supplied)”

16. The aforesaid requirement of such an assertion in the complaint about the power of attorney holder being in know of the transaction in question is to ensure that without knowledge or without any cause, any person may not be harassed or troubled or prosecuted in a Court of law.

17. Though there is no specific statement in the complaint about the special power of attorney holder to be conversant with the transaction between the complainant and the petitioner, but the settlement agreement (Ex.CW-1/H) has been signed by both, the special power of attorney holder and the petitioner. This makes it very clear that the petitioner also is aware of the fact that the entire transaction was known to the attorney. The Supreme Court in A.C.Narayanan (Supra) has categorized the legal position regarding a power of attorney holder:-

(i) Filing of complaint petition under Section 138 of N.I. Act through power of attorney is perfectly legal and competent.

(ii) The Power of Attorney holder can depose and verify on oath before the Court in order to prove the contents of the complaint. However, the power of attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions.

(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.

(iv) In the light of Section 145 of N.I. Act, 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 and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the Court, nor to examine the complainant of his witness upon oath for taking the decision whether or not to issue process on the complaint under Section 138 of the N.I. Act.

(v) The functions under the general power of attorney cannot be delegated to another person without specific clause permitting the same in the power of attorney. Nevertheless, the general power of attorney itself can be cancelled and be given to another person.”

18. Thus it is clear that the purpose of a specific statement about the knowledge of the attorney holder in complaint is only for the purposes of avoiding prosecution by any person, who is unknown to the

transaction. This not being the case in the present set of facts, the same cannot be read and construed against the complainant/respondent.

19. Thus for the reasons aforesaid, this Court finds no apparent reason to differ with the judgment of the Trial Court as well as of the Appellate Court.

20. The revision petition is dismissed.

Crl.M.(Bail) No.8008/2015

1. In view of the petition having been dismissed, this application has become infructuous.

2. This application is disposed of accordingly.

ASHUTOSH KUMAR, J

JANUARY 13, 2016

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