

**HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

*THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

+ **Crl.P.Nos. 8414,8691,8692,8695 and 8706 of 2016**

30.08.2017

Crl.P.No. 8414 of 2016

#Between:

Sesham Rao Niranjana,

...Petitioner/ accused

AND

1. The Andhra Pradesh,
Rep. by its Public Prosecutor,

2. Kum.Vidhi Mittal

Rep. by GPA Holder Sri G. P. Sharma

... Respondents

Crl.P.No. 8691 of 2016

#Between:

Sesham Rao Niranjana,

...Petitioner/ accused

AND

1. The Andhra Pradesh,
Rep. by its Public Prosecutor,

2. Smt.Manju Mittal

Rep. by GPA Holder Sri G. P. Sharma

... Respondents

Crl.P.No. 8692 of 2016

#Between:

Sesham Rao Niranjana,

...Petitioner/ accused

AND

1. The Andhra Pradesh,
Rep. by its Public Prosecutor,

2. M/s Vijay Mittal(HUF)

Rep. by its Kartha Sri vijay Mittal

Rep. by GPA Holder Sri G. P. Sharma

... Respondents

Crl.P.No. 8706 of 2016

#Between:

Sesham Rao Niranjana,

...Petitioner/ accused

AND

1. The Andhra Pradesh,
Rep. by its Public Prosecutor,2. Sri Vidhan Mittal
Rep. by GPA Holder Sri G.P.Sharma

... Respondents

Crl.P.No. 8695 of 2016

#Between:

Sesham Rao Niranjana,

...Petitioner/ accused

AND

1. The Andhra Pradesh,
Rep. by its Public Prosecutor,2. M/s C.L.Mittal (HUF)
Rep. by its Kartha Sri C.L.Mittal
Rep. by GPA Holder Sri G.P.Sharma

... Respondents

!Counsel for the petitioner : Sri R.Siva Sai Swaroop,

Counsel for the respondents : Public Prosecutor for R.1
Sri Vikram Poosala for R.2

<Gist :

>Head Note:

? Cases referred:

1. (2014) 11 SCC 790
2. (2002) 1 SCC 234
3. (2005) 2 SCC 217
4. 1983 4 SCC 701
5. (1967) 1 SCR 807
6. (2015) 1 ALT (CrI) 36 (AP)
7. 2005 1 ALD CrI.498
8. 2015 1 SCC 527

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

Crl.P.Nos. 8414,8691,8692,8695 and 8706 of 2016

ORDER :

The self-same petitioner Sesham Rao Niranjana of the 5 quash petitions supra, outcome of the 5 private complaints, is the accused filed by the respective complainants by name Kum. Vidhi Mittal D/o Sri Vijay Mittal viz; in C.C.No.354 of 2015 (old C.C.No.734 of 2015) (in Crl.P.No.8414 of 2016), Smt. Manju Mittal W/o Vijay Mittal in C.C.No.353 of 2015 (old C.C.No.733 of 2013) (in Crl.P.No.8691 of 2016), 3) M/s Vijaya Mittal(HUF) represented by its Kartha Vijay Mittal in C.C.No.281 of 2015 (old C.C.No.363 of 2014) (in Crl.P.No.8692 of 2016), 4) M/s C.L.Mittal(HUF) rep. by its Kartha Sri C.L.Mittal in C.C.No.277 of 2015(old C.C.No.351 of 2014) (in Crl.P.No.8695 of 2016) and 5) Sri Vidhan Mittal s/o Vijay Mittal in C.C.No.326 of 2015(old C.C.No.610 of 2014) (in Crl.P.No.8706 of 2016) all the cases on the file of the VI Spl.Magistrate Court at Visakhapatnam, for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act.

The quash petition averments common in the 5 petitions impugning the cognizance taken by the learned Magistrate and its sustainability are that as per Section 138 of the Negotiable Instruments Act, the complaint must be in writing made by the payee or the holder in due course of the cheque, as the case may be, and to read with Section 142 of the Act, it is the complainant, who filed the case must sign the complaint whereas, all the respective 5 complaints

in question were signed by one G.P.Sharma as GPA holder of the respective Complainants and not by respective complainants as Payees and except mentioning in the cause title of the respective complainants represented by GPA holder and at the end of the complaint at the signature as GPA holder but there is nothing to show the complaint filed on behalf of the original payee by the GPA holder to comply with the legal requirements and thereby from filing of complaint and taking of cognizance are unsustainable and are liable to be quashed.

A perusal of the respective 5 complaints in question, in the cause title mentioned the name of the complainant by mentioning the name of the complainant referring as represented by Power of Attorney Holder Sri G.P.Sharma, and in the full cause title also the address of the payee as represented by the Power of Attorney Holder address given. The complaints' averments speak the cheques issued for legally enforceable debts when presented returned dishonored and on intimation, notice cause issued and failed to liquidate and from the accrual of cause of action, filed the complaints in question before the Court having jurisdiction and at the end, the signature of the advocate, and the signature of the complainant represented by its Power of Attorney Holder including after verification of the facts are true and correct by complainant it is mentioned as represented by GPA holder. There is sworn statement filed for taking cognizance of the said private complaint by the said G.P.Sharma-GPA holder shows that he

is working as Accountant in Mittal Chambers and as GPA Holder of the complainant respectively having personal knowledge about the facts and filed a complaint on behalf of the complainant and the cheques, issued for the legally enforceable debt, returned dishnoured and for notice issued failed to pay and from the accrual of cause of action as referred in the complaints, the respective complaints are maintained.

The learned counsel for the quash petitioner submits in support of the grounds urged in the quash petitions that 5 complaints filed are unsustainable and laconic and contrary to legal requirements and the cognizance orders per se unsustainable and thereby the cognizance orders are liable to be set aside by quashing the proceedings in all the cases.

Whereas, it is submission of the learned counsel for the respective complainants as 2nd respondent for each of the 5 quash petitions that in the cause titles as well as in the verification paragraphs of the complaints clearly mentioned as filed by GPA Holder on behalf of the original payee and after verification paragraphs also by the GPA holder and the affidavit also filed by the GPA Holder stating as acquainted with the facts of the affidavit is to be read as part of the complaints and it complies with the statutory requirements and the complaints are not laconic and not liable to be quashed and cognizance order is sustainable and the petitioner has to

face the trial for the trial Court to decide on merits and thereby sought for dismissal of the respective quash petitions.

In this regard, coming to the legal position, the Constitution Bench (3JB) of the Apex Court in **A.C. Narayanan vs State Of Maharashtra**, and **G.Kanalakar Vs. Surana Securities Pvt. Ltd.**¹ observed that in view of the difference of opinion among various High Courts as also the decisions of the Apex Court in **M.M.T.C. Ltd. and Anr. vs. Medchl Chemicals and Pharma (P) Ltd.**² and **Janki Vashdeo Bhojwani vs. Indusind Bank Ltd.**³, on reference order saying filing of complaint petition u/sec. 138 of N.I.Act, through GPA holder perfectly legal and competent however such GPA holder certify due knowledge about the transaction in question, however, GPA holder cannot file a complaint in his own name as if he is a complainant that GPA holder can only initiate criminal proceedings on behalf of the principal under Section 200 CrPC and Section 60 of the Indian Evidence Act. Once there is verification under oath of complainant by the duly constituted GPA holder and GPA holder can depose and verify on oath before the Court and in order to prove the contents of the complaint and only such GPA holder as a witness the prosecution as agent of the payee/holder in due course or possessed due knowledge in regard to the prosecution.

¹ 2014(11) SCC 790

² (2002) 1 SCC 234

³ (2005) 2 SCC 217

The averment as to knowledge of the complainant required to be made in complaint. In a complaint filed through GPA holder an explicit assertion as to knowledge of GPA holder about prosecution in question must be satisfied. The GPA holder who has no knowledge regarding the prosecution cannot be examined as a witness. The complaint signed and filed through the GPA holder on behalf of the complainant again cannot sub-delegate to another person by GPA holder without a specific clause to permit the same in the GPA. However General Power of Attorney can itself cannot be cancelled and Power of Attorney can be given a letter to another person. Sufficiency of the affidavit or complainant or his witnesses under Section 200 CrPC r/w Section 145 of the NI Act, is suffice to take complaint on file for no need of examination of complainant and witnesses u/sec.200CrPC for either way is the discretion of the Magistrate in question. Once a Power of Attorney who has due knowledge of the prosecution may be allowed to file the complaint u/sec.138NI Act and also to appear and depose for the purpose of issue process for the offence. It has also been to the Magistrate to issue process on basis of the contents of the complaint in support thereof and the affidavit submitted by the GPA holder in support of the complaint and once the complainant-payee/holder in due course or his GPA holder files affidavit in support of the complaint before issuance of process and has permitted by Section 145 of the NI Act. It is open to the Magistrate if it thinks fit to call upon the complainant or

payee/holder in due course, and Power of Attorney Holder to appear and to examine as to facts contained in the affidavit submitted by the complainant in support of it within his discretion though not bound to entertain the complainant or his GPA holder to examine on oath once affidavit filed for the purpose of issuance of process.

It is also observed referring to the expression of the Apex Court in **Vishwa Mitter Of Vijay Bharat cigarette Stores, Dalhousie Road, Pathankot vs O.P. Poddar**⁴ and in **Ashwin Nanubhai Vyas vs. State of Maharashtra**⁵ that it is a way of explaining to the well settled position that criminal law can be put into motion by any one and strangers to prosecution by names in questions namely legal heirs also carry forward pending criminal proceedings or initiate original criminal complaint when the complainant dies, so far as the NI Act cases on locus standi of the payee as per the Section 138 and 142 of the N.I.Act and complaint signed and filed through GPA holder also maintainable however, GPA holder cannot file a complaint in his name as if he is the complainant but for on behalf of the original complaint payee/Holder in due course. It is also held that there is no conflict between the two expressions of **MMTC** and **Bhojwani** supra respectively.

The said Constitution Bench Judgment dated 13.09.2013 is quoted with approval by a single judge of this Court in **Duncan**

⁴ 1983 4 SCC 701

⁵ (1967) 1 SCR 807

Industries Limited Vs.T.G.Srinivas⁶ where it is a complaint by Company through a duly authorized person of the Company, can be either employee or non-employee either by resolution of the Board or by power of attorney and though there is no resolution of the Board to show that a proceeding filed by the complainant in the name of the company was authorized by the Board and nothing to show the Director of the Company executed a power of attorney in favour of the said person who was authorized by the Board to represent the company for the power of attorney holder to obtain the said power to prosecute could not have knowledge held the accused was rightly acquitted of the proceeding, but the complainant was not duly, authorized therein to file the complaint. The Full Bench of our High Court in **K.S.Ramachandra Rao Vs. State of A.P**⁷. held that GPA holder of a payee or holder in due course of a dishonour of cheque could file a complaint however there must be obtaining of permission by the court either before or after filing of complaint. The Full Bench Judgment though relied same no longer survives in view of the subsequent Constitution Bench judgment of the Apex Court held in **A.C.Narayanan** supra where it is not stated of any specific permission of the Court required. Relying upon the said Constitution Bench in **A.C.Narayanan** (2JB) the Apex Court in **Vineeta S.Rao Vs. ESSEN Corporate Services Private Limited**⁸ that a complaint

⁶ (2015) 1 ALT (Cri) 36 (AP)

⁷ 2005 1 ALD Cri.498

⁸ 2015 1 SCC 527

signed by the complainant filed through GPA holder given to her husband who was having personal knowledge of the transaction by recording sworn statement of GPA holder is sustainable and the contention contra is unsustainable for impugning the same and the consequential cognizance order.

Here, no doubt the case on hand is not such for the complaint is filed on behalf of the complainant/payee in the name of the complainant/payee by showing represented by the GPA holder and signed by GPA holder and sworn statement given by GPA holder mentioning personal knowledge of the facts in the affidavit. In fact, the MMTC Limited supra, that is also held not any conflict with **Bhojwani** supra subsequent expression, in answering the reference by the Constitution Bench of **A.C.Narayanan** supra speaks even the complaint filed in the name and on behalf of the company by its employee without necessary authorization, it can be rectified even by subsequent stage and held that the High Court could not have quashed the proceedings, including by accepting any contention of no legally enforceable debt for the matter to be decided in trial and even stop payment consideration for return of the cheque treating as a dishonour to draw the presumption under 139 of the Act. In fact, on perusal of the complaint shows the document of power of attorney executed by the complainant in question in favour of the GPA holder G.P.Sharma also filed as one of the documents.

Having regard to the above, there is nothing to impugn the cognizance but for to say the affidavit of the power of attorney in subsistence to be filed to recognize by the Court accordingly the same can be filed as held in MMTC supra being curable even post cognizance stage.

With these observations, all the 5 Criminal Petitions are disposed of, but for all available defence of the accused to put forth during trial is left open.

Consequently, the pending miscellaneous petitions in this Criminal Petition shall stand closed.

Date:30.08.2017

Note: L.R.Copy to be marked.
B/o.
Vvr.

Dr. B.SIVA SANKARA RAO J,

