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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 360/2012

JIA LAL SINGHAL Petitioner

Through: Mr. Surender Kumar, Advocate.

versus

SATISH CHAND @ SATISH KUMAR Respondent

Through: Mr. Rajat Wadhwa, Mr. R. Singh and
Mr. Karan Preet Singh, Advocates.

+ CRL.L.P. 377/2012

BITTOO SINGHAL Petitioner

Through: Mr. Surender Kumar, Advocate.

versus

SATISH CHAND @ SATISH KUMAR Respondent

Through: Mr. Rajat Wadhwa, Mr. R. Singh and
Mr. Karan Preet Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **17.07.2018**

These petitions impugn an order dated 23.04.2012 dismissing the petitioners' complaint under section 138 of the Negotiable Instruments Act, 1881. The complaint was filed by Power of Attorney- Mr. Rakesh Kumar Gupta. The Trial Court has held as under:-

*“16. Ld. Counsel for the accused further relied upon
“G. Sagarpuri & Anr. Vs. State of U.P. & Ors. 2000 (1)
Crimes 179 SC” where filing of separate criminal proceedings*

*against the accused persons u/s 406/420 IPC apart from a separate complaint u/s 138 of N.I. Act was held as abuse of process of law but however, this case is not relevant for the purpose of present matter. He further cited “**Roy Joseph Creado & Ors. V. Sk. Tamisuddin & Ors. 2008 CRL L.J. 1509**” where it was held that complaint must be signed and verified by the complainant and a complaint signed by a Special Power of Attorney holder is a defective complaint. He further cited “**Dr. Pradeep Mohan Bay V. Mingoel Carlos Dias 2002 DCR 35 (Bombay High Court)**” where it was held that a General Power of Attorney holder can appear, plead and act on behalf of the parties, but he cannot become a witness on behalf of the party. He can only appear in his own capacity. No one can delegate the power to appear in witness box on behalf of himself. It was further observed in this judgment that the word “acts” in Order III Rule 2 of the CPC does not include the act of power of attorney holder to appear as a witness on behalf of the party and he can only depose with respect to the facts which are in his knowledge. In the present matter also, complainant never appeared personally to depose about the averments made in the complaint which has obviously affected the version of the complainant in an adverse manner. ”*

The learned counsel for the respondent submits that there is no error in the impugned order, in view of the settled law that the complaint has to be filed by the affected party and evidence can be led by a Power of Attorney holder only if he has personal knowledge of the facts of the case.

In the present case, there is no such personal knowledge or involvement of or transaction by the said Attorney. Therefore, whatever evidence was led by him on the petitioner's behalf would have to be discounted.

He relies upon the judgment in **A.C. Narayanan v. State of Maharashtra & Anr.** AIR 2014 Supreme Court 630, which held as under:-

“19) As noticed hereinabove, though Janki Vashdeo Bhojwani (supra), relates to powers of Power of Attorney holder under CPC but it was concluded therein that 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. In a way, it is an exception to a well settled position that criminal law can be put in motion by anyone [vide Vishwa Mitter (supra)] and under the Statute, one stranger to transaction in question, namely, legal heir etc., can also carry forward the pending criminal complaint or initiate the criminal action if the original complainant dies [Vide Ashwin Nanubhai Vyas vs. State of Maharashtra (1967) 1 SCR 807]. Keeping in mind various situations like inability as a result of sickness, old age or death or staying abroad of the payee or holder in due course to appear and depose before the Court in order to prove the complaint, it is permissible for the Power of Attorney holder or for the legal representative(s) to file a complaint and/or continue with the pending criminal complaint for and on behalf of payee or holder in due course. However, it is expected that such power of attorney holder or legal representative(s) should have knowledge about the transaction in question so as to be able to bring on record the truth of the grievance/offence, otherwise, no criminal justice could be achieved in case payee or holder in due course, is unable to sign, appear or depose as complainant due to above quoted reasons. Keeping these aspects in mind, in MMTC (supra), this 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.

23) 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 N.I. Act. An exception to the above is when the power of attorney holder of the complainant does not have a personal knowledge about the transactions 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.

26) While holding that there is no serious conflict between the decisions in MMTC (supra) and Janki Vashdeo Bhojwani (supra), we clarify the position and answer the questions in the following manner:

(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.

In view of the above, the learned counsel for the petitioners does not press the petitions.

Since the Power of Attorney of the complainant did not have personal knowledge of the transactions, his evidence could be of no value. The impugned order has rightly held so and its reasoning does not call for any interference.

The petitions are dismissed as not pressed.

NAJMI WAZIRI, J

JULY 17, 2018

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