



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

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Reserved on: 29th August 2024

Pronounced on: 18th September 2024

+ **CRL.M.C. 1524/2024 & CRL.M.A. 5953/2024**

SANDEEP SHARMA

.....Petitioner

Through: Mr. Abhay Man Tripathi, Ms. Anjali Chand and Ms. Shivangi Pandey, Advocates along with petitioner in person.

versus

VIKRAM KUMAR PANDEY

.....Respondent

Through: Ms. Raavi Kumar Jotwani, Mr. Sanjay Dahiya, Mr. Deva Mani Mishra and Mr. Sanjay Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This petition has been filed seeking setting aside of order dated 31st January 2024 passed by ASJ, South West, Dwarka Court in Crl. Revision No. 412/2023.

2. By the said impugned order, a revision filed by petitioner was dismissed which in turn had impugned order dated 25th May 2023 passed by MM (NI Act), South West, Dwarka Courts in CC No. 29/2020, dismissing the



application under Section 251 of the Code of Criminal Procedure 1973 ('Cr.P.C'). read with Section 256 Cr.P.C. filed by petitioner.

Factual Background

3. The background facts are that the complainant alleged that the petitioner had approached the respondent by introducing himself as a friend of the respondent's wife. On that basis the respondent provided a friendly loan of Rs. 20 lakhs to the petitioner.

4. On 19th September 2019, two agreements were executed between the parties and the petitioner issued two cheques drawn on IndusInd Bank for Rs. 10 lakhs each in *lieu* of the loan. On 21st September 2020, the cheques were presented but were returned unpaid on 23rd September 2020 with the remark "*payment stopped by drawer*".

5. On account of non-payment of cheque, a legal notice was issued and a complaint was filed under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act'). Summons were issued on 28th November 2020. The petitioner/ accused appeared and furnished bail bonds. On the basis of submission of the parties the complaint was sent to the Mediation Cell for exploring the possibility of a settlement. Subsequently, mediation was reported to have failed.

6. In March 2022, the petitioner filed an application under Section 251 read with Section 256 Cr.P.C, on the grounds that the complaint was not filed by a competent person as the Power of Attorney ('POA') had not given the right to the attorney to institute the complaint against petitioner. A response



was filed by respondent followed up by a permission to place on record fresh Special Power of Attorney ('SPOA') executed on behalf of the respondent.

7. The MM passed an order dismissing the application of the petitioner on 25th May 2023, against which a revision petition was filed which was also dismissed by the impugned order.

Focal submissions on behalf of the Petitioner

8. The issue relates to whether the complaint filed basis a SPOA executed by complainant valid for the purpose of instituting the said complaint against the accused. It is an admitted fact that the complainant, Mr. Vikram Kumar Pandey, is working in the UAE and residing there. The complaint was based on a SPOA dated 22nd September 2020 executed by his brother in favour of Mr. Vivek Kumar Pandey. The substantive part of the said SPOA is extracted as under:

"1. To represent me/ initiate appropriate proceedings before the courts in New Delhi, India to all intents and purpose in connections with the criminal complaint and other proceedings filed against me by Ms. Vartika Sharrha.

2. To do all acts and things including to sign, verify, institute and present application/petitions for anticipatory bail, complaints, petitions, complaints (civil and criminal), applications, appeals, revisions, reviews, representations, various replies, affidavits and written statements etc.; to sign, affirm and declare affidavits; to appear, represent and defend my interest in a court of law and before other authorities and to do all acts and deeds as may be necessary and incidental to any legal proceedings in India initiated by me or against me.



3. *To engage and appoint any solicitor, advocate or advocates or counsel to act and plead and otherwise conduct the said case whenever my said attorney think proper to do so.*

4. *To do all other lawful acts and things in connection with the case as effectually as I could do the same lawfully do. I do hereby agree to ratify and confirm.”*

9. Petitioner’s counsel alleged that the SPOA was specifically for instituting proceedings and doing other acts in relation thereto filed by complainant, against Ms. Vartika Sharma, which had nothing to do with the accused herein.

10. It was contended by counsel for complainant that even though para 1 of the said SPOA mentioned Ms. Vartika Sharma, however para 2 was generic in nature and would have to be read as such.

11. Counsel for respondent further stated that, in any event, it was a curable defect, which had been rectified by filing the subsequent SPOA dated 22nd August 2022 which stated as under:

“1. To represent me/ initiate appropriate proceedings before the courts in Delhi, India to all intents and purpose in connections with the criminal and civil proceedings filed by me against Sandeep Sharma S/o Ratan Sharma R/o. 27/9, Old Rajinder Nagar, New Delhi-110060.

2. To file criminal complaint, complaint under section 138 of Negotiable Instruments Act, Civil Suit for Recovery of money etc. against Sandeep Sharma S/o Ratan Sharma R/o. 27/9, Old Rajinder Nagar, New Delhi-110060, on my behalf and to do all acts and things including, to sign,



verify, institute and present application/petition, complaints, petitions, complaints (civil and criminal), applications, appeals, revisions, \ reviews representations, various replies, affidavits and written statements etc.; to sign affirm and declare affidavits; to appear, represent and defend my interest in a court of law and before other authorities and to do all acts and deeds as may be necessary and incidental to any legal proceedings in India initiated by me against Sandeep Sharma S/o Ratan Sharma R/o 27/9, Old Rajinder Nagar, New Delhi-110060.

3. To engage and appoint any solicitor, advocate or advocates or counsel to act and plead and otherwise conduct the said case whenever my said attorney thinks proper to do so.

4. To do all other lawful acts and things in connections with the aforesaid case/s as effectually as I could do the same lawfully do, I do hereby agree to ratify and confirm.

I had already authorized my elder brother Mr. Vivek Kumar Pandey to do all acts and things including, to sign, verify, institute and present application/petition for anticipatory bail, complaints (civil and criminal), applications, appeals, revisions, reviews representations, various replies, affidavits and written Statements etc.; to sign affirm and declare affidavits; to appear, represent and defend my interest in a court of law and before other authorities and to do all acts and deeds as may be necessary and incidental to any legal proceedings in India initiated by me or against me, vide SPA dated 22nd September, 2020, on the basis of which Mr. Vivek Kumar Pandey has filed complaint case under section 138 of Negotiable Instruments Act against Sandeep Sharma S/o Ratan Sharma R/o. 27/9, Old Rajinder Nagar, New Delhi-110060. In order to remove any ambiguity in the said SPA dated 22nd September, 2020, and for clarification I am executing this fresh Special Power of Attorney.”



(emphasis supplied)

12. Respondent's counsel contended that a subsequent SPOA not only provided a specific mention to this particular complaint, but also noted that this complaint had been filed by Mr. Vivek Kumar Pandey and he was executing this new SPOA to remove any ambiguity which may have arisen.

13. Respondent's counsel also stated that this amounted to a second revision petition, the first revision already being dismissed by the impugned order.

14. To this, counsel for the petitioner stated that this petition had been filed under Section 482 C.r.P.C invoking the inherent powers of this Court, which they were entitled to do.

15. The application which had been filed under Section 256 Cr.P.C was to dismiss the complaint for non-prosecution. Considering that the complaint had been filed by a person who did not have legal authority and in the absence of a complainant, the complaint would have to be dismissed on that ground alone.

16. It is further stated that in the reply to that application, the complainant had admitted that Mr. Vivek Kumar Pandey was an authorized representative in the other case filed by Ms. Vartika Sharma but had "*mistakenly filed wrong power of attorney due to his negligence and lack of knowledge*". Further, that there was a delay of two years. The notice had not been framed.

17. The petitioner relied on the decision in ***P.R. Gunasekaran v. K. Balasubramani*** 2016 SCC OnLine Mad 11314 where the suit was dismissed



on an objection that a special power of attorney had authorized to institute a suit against another person and not against the defendant.

18. He further contended that the decision in *T.R.L. Krosaki Refractories Ltd. v. S.M.S. Asia Pvt Ltd.* (2022) 7 SCC 612, cited by the impugned order was in relation to a company where the authorised representative was a witness to the transaction and was therefore authorized to institute the complaint. He stated that in this case, however, it is the individual itself, so the said facts cannot apply.

19. He asserted that there is no quarrel on the legal proposition that a complaint can be filed through an SPOA, however, the issue was whether the SPOA initially filed was valid or not.

Submissions on behalf of Respondent/ Complainant

20. Counsel for complaint, however, pointed out to para 25 of the decision in *T.R.L. Krosaki Refractories Ltd. v. S.M.S. Asia Pvt Ltd.* (*supra*) which relied upon decision of the Supreme Court in *A.C. Narayanan v. State of Maharashtra* (2014) 11 SCC 790 and held that what was necessary to be demonstrated before the Magistrate is that the complaint is filed in the name of “payee” and if the person who is prosecuting the complaint is different from the payee, then it is to be demonstrated that the authorization and the contents of the complaint are within his knowledge.

21. Relevant extracts of the judgement in *T.R.L. Krosaki Refractories Ltd.* (*supra*) are as under:

“25. In that view, the position that would emerge is that when a company is the payee of the cheque based on



which a complaint is filed under Section 138 of the NI Act, the complainant necessarily should be the company which would be represented by an employee who is authorised. Prima facie, in such a situation the indication in the complaint and the sworn statement (either orally or by affidavit) to the effect that the complainant (Company) is represented by an authorised person who has knowledge, would be sufficient. The employment of the terms “specific assertion as to the knowledge of the power-of-attorney holder” and such assertion about knowledge should be “said explicitly” as stated in A.C. Narayanan [A.C. Narayanan v. State of Maharashtra, (2014) 11 SCC 790 : (2014) 4 SCC (Civ) 343] cannot be understood to mean that the assertion should be in any particular manner, much less only in the manner understood by the accused in the case. All that is necessary is to demonstrate before the learned Magistrate that the complaint filed is in the name of the “payee” and if the person who is prosecuting the complaint is different from the payee, the authorisation therefor and that the contents of the complaint are within his knowledge. When, the complainant/payee is a company, an authorised employee can represent the company. Such averment and prima facie material is sufficient for the learned Magistrate to take cognizance and issue process. If at all, there is any serious dispute with regard to the person prosecuting the complaint not being authorised or if it is to be demonstrated that the person who filed the complaint has no knowledge of the transaction and, as such that person could not have instituted and prosecuted the complaint, it would be open for the accused to dispute the position and establish the same during the course of the trial. As noted in Samrat Shipping Co. [Samrat Shipping Co. (P) Ltd. v. Dolly George, (2002) 9 SCC 455 : 2003 SCC (Cri) 1224] , dismissal of a complaint at the threshold by the Magistrate on the question of authorisation, would not



be justified. Similarly, we are of the view that in such circumstances entertaining a petition under Section 482 to quash the order taking cognizance by the Magistrate would be unjustified when the issue of proper authorisation and knowledge can only be an issue for trial.”

(emphasis supplied)

22. Counsel for complainant relied upon ***Jugraj Singh v. Jaswant Singh*** (1970) 2 SCC 386 where a three-judge bench of Supreme Court had held the second POA, which rectified the earlier POA, was acceptable and the rectification was thrown back to the date when the act was done as if agent had the authority to do that act at that time. In this regard the relevant paragraphs of the said judgment are extracted as under:

“9. The only question is whether the second power of attorney was effective to render valid the transaction of sale and the registration of the document both earlier than the power of attorney. In our judgment, it would be so. Mr Hardev Singh does not read into this matter the fact of ratification by Vernon Seth Chotia of this earlier power of attorney. The second power of attorney states in express terms that the first power of attorney was defective and was being ratified. Vernon Seth Chotia also stated in the second power of attorney that the act of Mr Chawla would be his act which included not only the making of the document but also the presentation of that document. Now the law is quite clear that ratification relates back to the original act provided there is a disclosed principal and this has been stated nowhere better than by Lord MacNaughton in Keighley, Maxsted and CO. v. Durant [1901 AC 241 at 246-47] quoting Tindal, C.J. in Wilson v. Tumman [1843-6 M and C at p. 242]

“That an act done, for another, by a person though without any precedent authority whatever, becomes the act of the



principal, if subsequently ratified by him, is the known and well established rule of law. In that case the principal is bound by the act, whether it be for his detriment or his advantage, and whether it be founded on a tort or on a contract, to the same effect as by, and with all the consequences which follow from, the same act done by this previous authority. And so by a wholesome and convenient fiction, a person ratifying the act of another, who, without authority, has made a contract openly and avowedly on his behalf, is deemed to be, though in fact he was not, party to the contract.”

10. Relation back of an act of ratification was expressly accepted in this case. Other cases have been summarised in the Manual of the Law and Practice of Powers of Attorney issued by the Council of the Chartered Institute of Secretaries. This follows from the maxim of law “Omnis ratiliabitio relrotrahitur et mandate priori acquiparatur” — that is to say, ratification is thrown back to the date of the act done, and the agent is put in the same position as if he had authority to do the act at the time the act was done by him. The learned authors quote the case of the House of Lords which we have above cited and add to it certain other cases with which we do not consider necessary to encumber this judgment.

11. It therefore follows that the second power of attorney was a valid document and it authorised Mr Chawla to execute the document as well as to present it for registration. This being a document ratifying a former inconclusive act related back to the time when the first document was made and cured the illegality in the presentation for registration which has taken place.

12. The case of the Privy Council on which great reliance was placed, namely, 58 IA 58 (cit. supra) no doubt states that presentation by a person who is not properly authorised by a power of attorney is ineffective and the registration void, but there the Judicial Committee was not considering the case of a subsequent ratification. They were only concerned with an invalid document and nothing more. If



there had been ratification, the other principle to which we have adverted here would have been taken note of and the decision would probably have been different.

13. In these circumstances, we are satisfied that there was proper execution of the document and registration. It is hardly necessary, in view of our decision, to say anything more about this case. We are also satisfied that the appellants were not entitled to a declaration. We have reproduced the para in which the reliefs were asked in the plaint. It will be noticed that they neither asked for the cancellation of the order of the Collector nor for any injunction, two of the reliefs which they were entitled to ask in the case in addition to the declaration. Such a suit would be hit by Section 42 of the Specific Relief Act and we would be quite in a position to deny them the declaration without these specific reliefs. Indeed they had only to ask for the setting aside of the order.”

(emphasis supplied)

23. Further reliance was made on the decision of the High Court of Jammu and Kashmir in **Ajay Gupta v. Ajay Trading Co.** 2024 SCC OnLine J&K 346 where the question for adjudication was that whether the complaint would be quashed since there was neither a partnership deed nor any authorization, authorizing the partner to file the complaint under Section 138 of the NI Act.

24. It was noted by the Court that whether Mr. Ajay Gupta was a partner and has the competence to file a complaint under Section 138 of NI Act was an issue which was required to be determined during the course of trial. The Trial Court after examining the contents of the complaint and examining the preliminary statement of the partner had issued the process against the petitioner and the same could not be faulted.



25. To this, counsel for petitioner stated that this is related to the partnership situation where Mr. Ajay Gupta was indeed one of the partners and not a situation where an individual was moving the complaint.

26. Counsel for complainant relied upon the Supreme Court's decision in ***M.M.T.C. Ltd. v. Medchl Chemicals and Pharma (P) Ltd.*** (2002) 1 SCC 234, where the Supreme Court held that no Court can decline to take cognizance on the sole ground that the complainant was not competent to file a complaint, only the eligibility criteria prescribed by the statute must be complied with. The only eligibility criteria prescribed under Section 142 is that the complaint must be either payee or the holder in due course.

27. The Supreme Court also held that the power of quashing in criminal proceedings should be exercised very stringently and with circumspection. Following paragraphs of the said judgment are instructive in this regard:

“11. This Court has, as far back as, in the case of Vishwa Mitter v. O.P. Poddar [(1983) 4 SCC 701 : 1984 SCC (Cri) 29] held that it is 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. It has been held that no court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. It has been held that if any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, then the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute. In the present case, the only eligibility criteria prescribed by Section 142 is that the complaint must be by the payee or the holder in



due course. This criteria is satisfied as the complaint is in the name and on behalf of the appellant Company.

12. In the case of Associated Cement Co. Ltd. v. Keshvanand [(1998) 1 SCC 687 : 1998 SCC (Cri) 475] it has been held by this Court that the complainant has to be a corporeal person who is capable of making a physical appearance in the court. It has been held that if a complaint is made in the name of an incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the court. It is held that the court looks upon the natural person to be the complainant for all practical purposes. It is held that when the complainant is a body corporate it is the de jure complainant, and it must necessarily associate a human being as de facto complainant to represent the former in court proceedings. It has further been held that no Magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. It has been held that there may be occasions when different persons can represent the company. It has been held that it is open to the de jure complainant company to seek permission of the court for sending any other person to represent the company in the court. Thus, even presuming, that initially there was no authority, still the company can, at any stage, rectify that defect. At a subsequent stage the company can send a person who is competent to represent the company. The complaints could thus not have been quashed on this ground.

13. The learned Judge has next gone into facts and arrived at a conclusion that the cheques were issued as security and not for any debt or liability existing on the date they were issued. In so doing the learned Judge has ignored the well-settled law that the power of quashing criminal proceedings should be exercised very



stringently and with circumspection. It is settled law that at this stage the Court is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. At this stage the Court could not have gone into merits and/or come to a conclusion that there was no existing debt or liability.”

(emphasis supplied)

Analysis

28. For the purposes of analysis, it would be useful to extract Section 142 (a) as under:

“142. Cognizance of offences [(1)] *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-*

(a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;”

29. The argument made is that the ingredients that the complaint be made by a payee should be satisfied.

30. The counsel for the respondent also contended that under the Power of Attorney Act of 1882, the definition is only of a ‘*power of attorney*’ and there is no distinction made between a ‘*special power of attorney*’ and a ‘*general power of attorney*’.

31. Further, it states that the name of the document should not be taken and that nomenclature itself cannot be determined. It is further contended that in



any event, by the second POA, the earlier act had been ratified and that technical difficulty should not be come in the way of justice being done. Since the complainant himself stated in the second POA about the fact that complaint was instituted at his behest and that there was clear intention to prosecute.

32. In any event, these would be matters of trial as and to be adjudicated later as held in the case of *T.R.L. Krosaki (supra)*. Further the matter has been pending since 2019. The amounts have been given under an executed agreement dated 17th September 2019, duly stamped and it could not be the case that this was the frivolous complaint.

33. This Court is of the opinion that both the MM and the Revisional Court have been right in their opinion and the petitioner is pursuing these proceedings merely in order to escape the continuance of the proceedings which have been pending since 2019, being the accused, for the dishonour of two cheques of 10 lacs which have been provided purportedly under an agreement of 17th September 2019, which this Court has perused.

34. The SPOA on the basis of which the complaint was filed originally did focus on the proceedings of Vartika Sharma and clause 2 of the said first SPOA was relatable to all acts incidental to those proceedings. To that extent the respondent's contention that clause 2 can be read in a general manner in order to consider the authority being given to Vivek Kumar Pandey to institute this complaint, may not stand on a good footing.

35. However, it was at best a technicality and a curable defect which in fact was rectified by the second SPOA which had a specific mention of the



complaint and also effectively ratified the initial act of filing the complaint through Vivek Kumar Pandey.

36. The argument raised by accused before the MM that this would amount to an amendment of the complaint was held as not maintainable by the MM. The argument which has been pressed by the petitioner is, therefore, extremely specious and untenable, considering that it cannot be denied that the complaint is indeed moved on behalf of Mr. Vikram Kumar Pandey, son of Mr. Sandeep Kumar Pandey, citizen of India, working and residing in the UAE, who is the payee in the two cheques which are dishonoured and who had also executed the agreement dated 17th September 2019 with the accused for showing the receipt of the loan. Disentitling the complainant, having ratified the previous act, and quashing the proceedings on the basis that it is not being prosecuted, would be a travesty of justice.

37. Not only the Supreme Court in *T.R.L. Krosaki* (*supra*) stated that if there was a dispute of the complaint not being authorized, or that the person who filed the complaint having no knowledge of the transaction, it would be open for the accused to dispute the position and establish it during the course of trial. Clearly this is not a case where the facts are such that the person instituting the complaint was not aware of its authorization, or had no knowledge of the transaction.

38. The Supreme Court in *Jugraj Singh* (*supra*) has also clearly stated on the same lines, that the ratification is thrown back to the date of the act done relying on the latin maxim '*Omnis ratiliabitio relrotrahitur et mandate priori acquiratur*' that is to say, ratification is thrown back to the date of the act



done, and the agent is put in the same position as if he had authority to do the act at the time the act was done by him.

39. The petitioner's reliance on the Madras High Court decision in ***P.R. Gunasekaran v. K. Balasubramani*** (*supra*) is unmerited, since it is not based on similar facts and does not lay down a general principle of law. Besides, it relates to the filing of a civil suit with no subsequent power of attorney having been filed in order to ratify the previous attorney.

40. Reliance on Jammu & Kashmir decision which in turn relies on ***T.R.L. Krosaki*** (*supra*) and ***Samrat Shipping Co. (P) Ltd. v. Dolly George*** (2002) 9 SCC 455 is also apposite in this regard.

41. Petition is dismissed accordingly. Pending application is also dismissed accordingly.

42. Trial Court is directed to expedite the trial considering that the matter has been pending since 2019.

43. Judgment be uploaded on the website of this Court.

ANISH DAYAL, J

SEPTEMBER, 18th, 2024/RK/kp