
(2012) 12 RAJ CK 0039

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 1523 of 2010

Rifakat Ali Choudhary

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 07-12-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 1, Order 3 Rule 2
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2013) 3 RLW 1992

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Kailash Khatri, for the Appellant; A.R. Nikub, Public Prosecutor, for the Respondent

Judgement

Sandeep Mehta, J.—These two miscellaneous petitions have been filed by the petitioner seeking quashing of the proceedings of the two complaints No. 6882007 (Cr. Case No. 195/2008) and 689/2007 (Cr. Case No. 196/2008) pending in the Court of Addl. Chief Judicial Magistrate (C.B.I. Cases) Jodhpur filed by the respondent No. 2 against the petitioner for the offence u/s 138 of the Negotiable Instruments Act as well as the order dated 3.3.2008 whereby cognizance for the said offence has been taken against him. The learned counsel for the petitioner contended that in this case the proceedings of the complaints filed by the respondent No. 2 are absolutely illegal and deserve to be quashed for the reason that the complaint has been filed on behalf of proprietorship firm named Dimple Impex but the proprietor of the firm has not filed the complaint. He submits that the complaint has been filed by the power of attorney holder Kalu Chand Jain and not by the proprietor of the firm and thus the same is liable to be quashed. He submitted that Kalu Chand Jain in the affidavit filed in support of the complaint has not mentioned any grounds or facts as to how he was aware about the day to day functioning of the firm so as to swear the affidavit on behalf of the firm. He, therefore, prayed that the proceeding of the complaint are liable to be quashed. Learned counsel in support of his contentions relied upon a

decision of the Apex Court in the case of Shankar Finance and Investments Vs. State of Andhra Pradesh and Others, and prayed that the proceedings of the complaints should be quashed.

2. After considering the arguments advanced at the bar and after perusing the complaints impugned as well as the affidavits which have been filed in support of the complaint, it is apparent that the affidavits have been sworn by Kalu Chand Jain, the husband of Smt. Rinku Jain the proprietor of the firm Dimple Impex in his capacity as the power of attorney holder authorised by the proprietor. In his affidavit Kalu Chand Jain has clearly mentioned that Rinku Jain the proprietor of the firm has authorised him through the validly executed power of attorney to conduct all sorts of legal proceedings on behalf of the firm. So far as the issue to whether Kalu Chand Jain was aware about the day to day functioning of the firm is concerned, the said aspect can only be assessed when the aforesaid Kalu Chand Jain is examined and cross examined at the trial. That apart, the proceedings of the complaints have been challenged at the threshold i.e. at the stage of cognizance. There is no restriction for the complainant herself to be examined when the trial of the case proceeds. Therefore, the complaint as well as the order taking cognizance can neither be said to be illegal nor an abuse of the process of the Court. The judgment of the Apex Court in the case of M/s. Shankar Finance (supra) which has been relied by the learned counsel for the petitioner runs contrary to the proposition advanced by the learned counsel seeking quashing of the proceedings of the complaints. The Apex Court has rather approved the deposition of the power of attorney holder on behalf of the actual complainant. The Hon'ble Apex Court has observed as below:-

12. The High Court has referred to the fact that the sworn statement before the learned Magistrate was of the Attorney holder of the payee and not by the payee in person. According to the tenor of the order of the High Court, this was also irregular. But we find nothing irregular in such a procedure. It is now well settled that the object of section 200 of the Code in providing for examination of the complainant and his witnesses by the court is to satisfy itself about the existence of a prima facie case against the person accused of the offence and to ensure that such person is not harassed by false and vexatious complaints by issue of process; (See Nirmaljit Singh Hoon Vs. The State of West Bengal and Another, . Where the proprietor of the proprietary concern has personal knowledge of the transaction and the proprietor has signed the complaint, he has to be examined u/s 200 of the Code. A power of Attorney holder of the complainant who does not have personal knowledge, cannot be examined. But where the Attorney holder of the complainant is in charge of the business of the payee-complainant and the Attorney holder alone is personally aware of the transactions, and the complaint is signed by the Attorney holder on behalf of the payee-complainant, there is no reason why the Attorney holder cannot be examined as the complainant. We may, in this connection, refer to the decision of this Court in Janki Vashdeo Bhojwani and Another Vs. Indusind Bank Ltd. and Others, , where the scope of an Attorney holder "acting" on behalf of the principal in a civil suit governed by

CPC was examined. This Court observed:

Order 3, Rules 1 and 2, CPC empower the holder of Power of Attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order 3, Rules 1 and 2, , CPC confines only to in respect of "acts" done by the power-of-attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and Instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance of Power of Attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.

The principle underlying the said observations will apply to cases u/s 138 of the Act. In regard to business transactions of companies, partnerships or proprietary concerns, many a time the authorized agent or Attorney holder may be the only person having personal knowledge of the particular transaction; and if the authorized agent or Attorney holder has signed the complaint, it will be absurd to say that he should not be examined u/s 200 of the Code, and only the Secretary of the Company or the partner of the firm or the proprietor of a concern, who did not have personal knowledge of the transaction, should be examined. Of course, where the cheque is drawn in the name of the proprietor of a proprietary concern, but an employee of such concern (who is not an Attorney holder) has knowledge of the transaction, the payee as complainant and the employee who has knowledge of the transaction, may both have to be examined. Be that as it may. In this case we find no infirmity.

3. The observations made by the Apex Court clearly lay down that where the Attorney holder of the complainant is in charge of the business of the payee-complainant firm and the Attorney holder alone is personally aware of the transactions, and the complaint is signed by the Attorney holder on behalf of the firm payee-complainant, there is no reason as to why the Attorney holder cannot be examined as the complainant. In view of the aforesaid observations made by the Hon'ble Apex Court in the case of M/s. Shankar Finance (supra), the contentions raised by the learned counsel for the petitioner seeking quashing of the complaint are not worthy of acceptance for quashing the complaint at the threshold. Accordingly, the miscellaneous petitions being bereft of any force are hereby rejected. The stay applications are also rejected.