
(2007) 08 MP CK 0035
In the Madhya Pradesh High Court

Smt. Shashi Shrivastava

APPELLANT

Vs

Smt. Vidyadevi Kushwah

RESPONDENT

Date of Decision : 16-08-2007

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 142
Powers of Attorney Act, 1882 — Section 1A, 2

Citation : (2007) 4 MPHT 300 : (2008) 1 MPJR 157

Hon'ble Judges : Brij Mohan Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Brij Mohan Gupta, J.

This petition is for impugning the order dated 17th March, 2006 passed by the 1st Additional Sessions Judge, Gwalior in Criminal Revision No. 31/06, whereby the learned Judge has affirmed an order dated 10th January, 2006 passed by the JMFC, Gwalior in Criminal Case No. 1302/04. Vide order dated 10th January, 2006, the learned Magistrate has rejected an application filed on behalf of the petitioner negating his prayer to quash the complaint as the same has not been filed by the complainant but by power of attorney holder and thus not in accordance with the provisions of Section 142 of the Negotiable Instruments Act (hereinafter it shall be referred to as "the Act").

On perusal, the complaint dated 11-2-2002, it has been filed by the respondent/complainant against the petitioner/accused for the offence punishable u/s 138 of Negotiable Instruments Act (hereinafter referred to as "the Act"). The title of the complainant as has been given in the complaint is: Smt. Vidiya Devi Kushwaha, w/o Jagdish Kushwaha, aged about 52 years, occupation Household r/o House No. 272, Saket Nagar, Gwalior. Through power of attorney holder Jagdish Kushwaha, R/o House No. 272, Saket Nagar, Gwalior. This complaint has been signed by power of attorney Jagdish Singh.

(Emphasis supplied)

The contention of Shri Bhadoria, the learned Counsel for the petitioner is that as provided by Sub-section (a) of Section 142 of the Act, the complaint is required to be filed by payee or holder of the cheque in due course by himself and not through the power of attorney holder.

The relevant provision of Section 142(a) goes as under:

142. Cognizance of offences.-- Notwithstanding anything contained in the Code of Criminal Procedure, 1973,-

(a) no Court shall take cognizance of any offence punishable u/s 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;

(b) (c) Emphasis supplied)

On perusal of this provision it appears that the complaint is required to be filed in writing either by a payee or by holder of the cheque in due course and by none else. On perusal of the title of the complaint as quoted herein above it appears that this complaint has been filed by Vidya Devi who is admittedly the payee of the cheque. The complaint has not been filed by Jagdish who is husband of Vidya Devi, in his personal capacity but it is filed on behalf of complainant payee Vidya Devi through her power of attorney holder, who is incidentally her husband also.

The capacity of power of attorney holder appears from Sections 1A and 2 of the Power of Attorney Act, 1882, which goes as under:

1-A. Definition.--In this Act, "power of attorney" includes any instrument empowering a specified person to act for and in the name of the person executing it.

Execution under power of attorney.--The donee of a power of attorney may if he thinks fit, execute or do any instrument or thing in and with his own name and signature, and own seal, where sealing is required, by the authority of the donor of the power, and every instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers of attorney created by instruments executed either before or after this Act comes into force.

It appears that a power of attorney may do anything in and with his own name and signature, by authority of the donor of the power and every instrument and thing so executed and done shall be as effectual in law as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof. Having such power under this Act if a complaint is filed by the power of attorney holder is required to be considered as the same has been filed by or under the authority of complainant. If different view is taken difficulty

may be caused to such complainants who are leaving abroad but having rightful cause to be established in the Country. Some complainants may be incapable of putting signatures/thumb impression may also feel such difficulties. In that case they will have to visit India for filing such complaints. When under a specific enactment such facility and authority is provided the same ought not to be denied. As provided by aforementioned provision of the law the act done on behalf of donar of the power, by a power of attorney holder, is required to be deemed to be done on behalf of such donar, then in that case signatures of the power of attorney on complaint are required to be considered as those have been put by the complainant, the donee of the power. In my considered opinion there appears no wrong in present complainant on this point.

Shri Bhadoria, the learned Counsel for the petitioner has placed reliance on an order of the Andhra Pradesh High Court rendered in S.P. Sampathy Vs. Smt. Manju Gupta and Another, , in which it is observed that the power of attorney holder has no entity in terms of Section 142 of the Act. In that case the provisions of Power of Attorney Act, 1882 were not dealt with. In the present case, the power of attorney holder himself is not filing a complaint on his behalf, hence it cannot be challenged on the ground that he is neither a payee nor a holder of a cheque in due course. The power of attorney holder Jagdish has filed the complaint on behalf of the payee, under an authority given to him through a power of attorney, which is permissible under the Power of Attorney Act.

Consequently the petition is dismissed.