
(2002) 02 AP CK 0168

In the Andhra Pradesh High Court

Case No : Criminal Petition No"s. 2211, 2212, 2213, 2214, 2215, 2218, 2219 and 2220 of 2000

S.P. Sampathy

APPELLANT

Vs

Smt. Manju Gupta and Another

RESPONDENT

Date of Decision : 18-02-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482, 5
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2002) 1 ALT(Cri) 497 : (2002) 111 CompCas 492 : (2002) CriLJ 2621 : (2002) 3 RCR(Criminal) 309 : (2003) 44 SCL 25

Hon'ble Judges : Gopala Krishna Tamada, J; Bilal Nazki, J

Bench : Division Bench

Advocate : M. Sivananda Kumar, for the Appellant; T. Jagadish, for the Respondent No. 1 and Public Prosecutor for the Respondent No. 2, for the Respondent

Judgement

1. Eight cases have been referred to this Court by virtue of an order of reference made by learned Single Judge of this Court dated 22nd November, 2001. The short point involved is whether a Criminal Court can take cognizance of a complaint u/s 138 of Negotiable Instruments Act on a complaint having been filed by a power of attorney holder of the complainant. The learned Single Judge of this Court in Smt. Payyati Savitri Devi v. Malireddy Damayanthamma 1 (1997) BC144 : 1997(4) Crimes 325, relying on Madras High Court judgment in Manimekalai v. Chapaldas Kalyanji Sanghi 1995 CrL. L.J. 1102, has taken the view that a complaint could be filed by a general power of attorney holder also. The Madras High Court formed the opinion on the basis of Section 195 of the Code of Criminal Procedure. There is not much of discussion in the judgment of the learned Single Judge of this Court (supra), therefore, the learned Single Judge before whom the present matters had come up, expressing his doubts about the views taken by the learned Single Judge of this Court in the judgment (supra,) referred the matter to the Division Bench. We have heard the learned

Counsels for the parties and gone through the record. We have seen the complaint as well. The complaint in these cases was not filed by the power of attorney holder. The complaint had been purported to have been made by the complainant who is the payee but it was signed by the power of attorney holder. It was argued before us that, whether it is necessary under Negotiable Instruments Act for a payee to personally file the complaint or even a holder can file the complaint who could be a holder in terms of Section 8 read with Section 142 of the Negotiable Instruments Act. But, those questions do not arise in these matters because the complaint itself was shown to have been made by the payee, but it was not signed by the payee. Section 142(a) of the Negotiable Instruments Act lays down that the Court will not take cognizance of an offence punishable u/s 138 except on a complaint in writing made by the payee or the holder in due course of the cheque. Clearly the Code of Criminal Procedure is not applicable. Section 5 of the Criminal Procedure Code lays down :

"5. Saving--Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law for the time being in force."

From bare perusal of Section 5 of the Criminal Procedure Code it is clear that the Code lays down procedure for trial of all criminal cases except under any special or local law for the time being in force or any special jurisdiction or power conferred or any special form of procedure prescribed by any other law for the time being in force. Therefore, for the purpose of taking cognizance, the provisions of Criminal Procedure Code have been excluded by Section 142 of N.I. Act. Therefore, any reference or reliance placed on Section 198 or Chapter XX of the Criminal Procedure Code is misplaced. The Trial Court gets jurisdiction to entertain a complaint only on satisfaction of two conditions, (1) that the complaint should be in writing : (2) it should be made by the payee or holder in due course of the cheque. Admittedly, in these cases the complaint had been made in the name of the complainant but it was not signed by the complainant but signed by his power of attorney holder. When the law demands that complaint should be in writing by the payee that means the complaint should be made and signed by the payee or the holder in due course. Admittedly, in the present cases that has not been done. Power of attorney holder has no entity in terms of Section 142 of N.I. Act. One can understand a complaint having been made u/s 142 by a holder in due course of the cheque but a power of attorney holder would not be a holder in due course of the cheque and he has not even been averred in the complaint that the power of attorney is holder of the cheque. He has only signed the complaint on behalf of the complainant.

2. The learned Counsel for the respondents has referred to some judgments. He referred to Madras High Court judgment in Manimekalai v. Chapaldas Kalyanji Sanghvi (supra). Since we have already held that Code of Criminal Procedure has no application as far as taking of cognizance u/s 138 of the N.I. Act is concerned,

therefore, it will not be possible for us to agree with the view of Madras High Court. The Madras High Court in the judgment did not consider the import of Section 5 of the Code of Criminal Procedure. He also referred to a Full Bench judgment of this Court in Kamapati Venkat Ramiah Vs. Challapalli Sitharamiah, . We do not feel it relevant for the purpose of this case. Similarly the judgment from Punjab and Haryana High Court in Surinder Singh v. John Impex (Pvt.)Ltd. 1997(1) CCC 81, was referred. There was no special provision and the complaint in that case was in terms of the Criminal Procedure Code. He also referred to a judgment of Calcutta High Court in Abdul Rahim v. Amal Kumar 1994(2) C CC 60. We do not agree with the views taken for the reasons given hereinabove.

3. We are of the considered view that the complaint u/s 142 can be filed either by the payee or the holder thereof. Whether the person is holder thereof is a question of fact and has to be pleaded. In the present case there is no such pleading and in fact the person who filed the complaint had not filed the complaint on his behalf, he had filed the complaint on behalf of payee which is not permissible in terms of provisions of Section 142 of the N.I. Act. We do not agree with the judgment of the Punjab and Haryana High Court in SurinderSingh v. John Implex (Pvt.) Ltd., (supra) for the same reasons.

4. For the reasons mentioned herein above we hold that complaint cannot be filed by a power of attorney holder on behalf of payee u/s 138 of the N,I. Act. The complaint can only be filed in writing by the payee or the holder in due course. The law laid down by the learned Single Judge of thisCourt in Smt. Payati Savitri Devi v. Malireddy Damayanthamma (supra) is not good law. The reference is accordingly answered and the matters are referred back to the learned Single Judge for disposal.