

Pankaj Agarwal Vs. The State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Oct-04-2017

Appellant : Pankaj Agarwal

Respondent : The State of Jharkhand and Ors

Advocate for Pet/Ap. : Mr. Rajesh Kumar

Judgement :

Cr. Revision No. 411 of 2012 --- Against the order dated 14.5.2012, passed by the learned Judicial Magistrate, Dhanbad in Complaint Case (C.P.) No. 271 of 2012. ----- Pankaj Agarwal, S/o Shri Roshan Lal Agarwal, Resident of Ganesh Chowk, Lal Bazar, P.O. & P.S. Jharia, District-Dhanbad, acting as the authorised agent of M/s Prabhu Coke Manufacturing Co. having its office at Ashok Nagar, P.O. Dhansar, P.S. Bank More, District-Dhanbad and head office at Ashok Nagar P.O. Dhansar, P.S. Bank More, District-Dhanbad and Factory at Saraidhela, P.O. P.S. Saraidhela, District-Dhanbad.Petitioner Versus 1. The State of Jharkhand.

2. M/s Haryana Suraj Maltings Ltd., having its registered office and works at 96th K.M. Stone, Delhi-Jaipur Highway, P.O. Bawal, P.S. Bawal, District-Rewari, Harayana.

3. Mukesh Agarwal.

4. Subha Agarwal.

5. Sant Singh Makkar.

6. Jitendra Kumar. O.P. Nos. 3 to 6 are residents of Care M/s Haryana Suraj Maltings Ltd., 96th K.M. Stone, Delhi, Jaipur Highway, P.O. P.S. Bawal, District-Rewari, Haryana.

7. Samir Chhabra, Resident of B-246-B Greater Kailash, Part-I, New Delhi.

8. Ajay Inder Majithia, Resident of 133, Sector-21-A, P.O. P.S. & District-Chandigarh, Haryana. .Opposite Parties --- For the Petitioner : Mr. Rajesh Kumar, Advocate For the State : Mr. K.K. Mishra, APP For O.P. Nos. 2 to 6 : None -----
PRESENT HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY --- Rongon Mukhopadhyay Heard Mr. Rajesh Kumar, learned counsel for the petitioner and Mr. K.K. Mishra, learned A.P.P. No one appears on behalf of O.P. Nos. 2 to 8 in spite of valid service of notice. In this application, the petitioner has prayed for quashing the order dated 14.5.2012, passed in Complaint Case (C.P.) No. 271 of 2012, by the learned Judicial Magistrate, Dhanbad, whereby and whereunder complaint petition preferred by the petitioner was dismissed under section 203 Cr.P.C. A complaint was made by the petitioner being constituted power of attorney holder of M/s Prabhu Coke Manufacturing Company alleging therein that the accused persons had placed purchase orders with M/s Prabhu Coke Manufacturing Company and pursuant to the same, materials were supplied. It has been alleged that consignment -2- of Coke worth Rs.20,03,030.10 was sent to the accused. It has further been alleged that after much persuasion, payment was made on various dates to the tune of Rs.5,02,089.00. It has been stated that two cheques were issued in favour of M/s Prabhu Coke Manufacturing Company and since the accused had instructed the bank to stop payment, as such when the complainant produced the cheques before the bank, it was returned with an endorsement "stop payment". It has been alleged that a legal notice was sent but since no steps were taken by the accused for making payment, a complaint was filed, which was registered as Complaint Case No.271 of 2012. Complainant was examined on solemn affirmation and he was directed to file the original documents. On 20.02.2012, the original documents including power of attorney executed by and on behalf of M/s Prabhu Coke Manufacturing Company

appointing the petitioner as its constituted attorney were filed. However, vide order dated 14.5.2012, the complaint was dismissed under section 203 Cr.P.C. on the ground that the complainant did not have the locus standi to file a complaint on behalf of the company. Assailing the impugned order dated 14.5.2012, learned counsel for the petitioner has submitted that the petitioner was legally authorized by the company to file a complaint on its behalf and therefore it cannot be said that the petitioner did not have the locus standi to file a complaint. Learned counsel further submits that the complaint was filed by the petitioner not in his individual capacity but in a representative capacity and being authorized to do so by M/s Prabhu Coke Manufacturing Company. Learned counsel in support of his contention has referred to an order passed by the Hon'ble Supreme Court in the case of A.C. Narayanan Vs. State of Maharashtra and another reported in [2013 (131) AIC160(S.C.)]. Before adverting to the contentions made by the learned counsel for the petitioner, it is necessary to look to the form and contents of the complaint petition so instituted. Cause title of the complaint petition reveals the name of the petitioner acting as the authorised agent of M/s Prabhu Coke Manufacturing Company. In paragraph 2 of the complaint petition, it has been specifically stated that the complainant had been authorized by M/s Prabhu Coke Manufacturing Company to take all steps and file the criminal case -3- against the accused persons for realisation of the dues of the company. Thus, it is clear from a bare reading of the complaint petition that the same has been preferred by the petitioner on behalf of M/s Prabhu Coke Manufacturing Company and not on his personal behalf. It is to be seen in this background as to whether the petitioner had the locus to file the complaint case on behalf of the company. In the case of A.C. Narayanan (supra), considering a similar issue, it was held as follows:-

"0. The stand of the appellant in Criminal Appeal No. 73 of 2007 is that no complaint can be filed and no cognizance of the complaint can be taken if the complaint is by the power-of-attorney holder, since it is against Section 200 of the Code and deserves to be rejected. There is no dispute that complaint has to be filed by the complainant as contemplated by Section 200 of the Code, but the said section does not create any embargo that the attorney holder or legal representative(s) cannot be a complainant.

21. The power-of-attorney holder is the agent of the grantor. When the grantor authorises the attorney holder to initiate legal proceedings and the attorney holder accordingly initiates such legal proceedings, he does so as the agent of the grantor and the initiation is by the grantor represented by his attorney holder and not by the attorney holder in his personal capacity. Therefore, where the payee is a proprietary concern, the complaint can be filed by the proprietor of the proprietary concern, describing himself as the sole proprietor of the payee, the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor, and the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor. However, we make it clear that the power-of-attorney holder cannot file a complaint in his own name as if he was the complainant. In other words, he can initiate criminal proceedings on behalf of the principal.

22. From a conjoint reading of Sections 138, 142 and 145 of the NI Act as well as Section 200 of the Code, it is clear that it is open to the Magistrate to issue process on the basis of the contents of the complaint, documents in support thereof and the affidavit submitted by the complainant in support of the complaint. Once the complainant files an affidavit in support of the complaint before issuance of the process under Section 200 of the Code, it is thereafter open to the Magistrate, if he thinks fit, to call upon the complainant to remain present and to examine him as to the facts contained in the affidavit submitted by the complainant in support of his complaint. However, it is a matter of discretion and the Magistrate is not bound to call upon the complainant to remain present before the court and to examine him upon oath for taking decision whether or not to issue process on the complaint under Section 138 of the NI Act. For the purpose of issuing process under Section 200 of the Code, 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 NI Act. It is only if and where the Magistrate, after considering the complaint under Section 138 of the NI Act, documents produced in support thereof and the verification in the form of affidavit of the complainant, is of the view that examination of the complainant or his witness(s) is required, the Magistrate may call upon - the complainant to remain present before the court and examine the complainant and/or his witness upon oath for taking a

decision whether or not to issue process on the complaint under Section 138 of the NI 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 NI Act. An exception to the above is when the power-of- -4- 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.

24. In view of the discussion, we are of the opinion that the attorney holder cannot file a complaint in his own name as if he was the complainant, but he can initiate criminal proceedings on behalf of his principal. We also reiterate that where the payee is a proprietary concern, the complaint can be filed: (i) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the payee; (ii) the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (iii) the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor." Petitioner being the constituted power of attorney holder was aware of the entire act of the accused leading to institution of the complaint case and therefore taking into consideration this aspect of the matter, complainant was examined on solemn affirmation but subsequently the learned court below dismissed the complaint petition on the ground of maintainability. Continuing with the judgment, under reference, the legal preposition and in view of conflicting judgments in the case of MMTC Ltd Vs. MEDCHL Chemicals & Pharma (P) Ltd, reported in 2002 (1) SCC234 and Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd and others, reported in 2005 (2) SCC217 the legal preposition was clarified in the following manner. "26(i) Filing of complaint petition under Section 138 of the NI 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 the NI 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 NI Act and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the Court, nor to examine the complainant or his witness upon oath for taking the decision whether or not to issue process on the complaint under Section 138 of the NI 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". -5- Thus, in the aforesaid judgment, it has categorically been held that power of attorney holder has a right to file, appear and depose for the purpose of issuance of process for an offence under section 138 of the Negotiable Instruments Act. The complainant thus seems to have personal knowledge of the transaction and as has been stated above, he was representing the company being the constituted power of attorney holder and therefore the order of the learned court below dismissing the complaint under section 203 of Cr.P.C. holding therein that the complainant did not have the locus standi to file a complaint is wholly contrary to the principles of law laid down by the Hon'ble Supreme Court. As a consequence to the discussions made herein above, this application is allowed and the impugned order dated 14.5.2012, passed in Complaint Case (C.P.) No. 271 of 2012, by the learned Judicial Magistrate, Dhanbad, whereby and whereunder complaint petition preferred by the petitioner was dismissed under section 203 Cr.P.C., is hereby set aside and the matter is remitted back to the learned court below to proceed with the complaint case instituted by the petitioner in accordance with law. This application stands allowed. (Rongon

Mukhopadhyay,J) Jharkhand High Court, Ranchi Dated 4th October, 2017
Rakesh/NAFR

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