

**S. Ramesh Vs. Basanth Kumar Patil**

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**Court :** Karnataka

**Decided On :** Feb-19-2001

**Reported in :** ILR2001KAR2833; 2001(6)KarLJ201

**Judge :** N.S. Veerabhadraiah, J.

**Acts :** [Negotiable Instruments Act, 1881](#) - Sections 138 and 142

**Appeal No. :** Criminal Petition Nos. 2482 to 2488 of 2000

**Appellant :** S. Ramesh

**Respondent :** Basanth Kumar Patil

**Advocate for Def. :** H.R. Ananthakrishna Murthy, Adv.

**Advocate for Pet/Ap. :** C.V. Nagesh, Adv.

**Disposition :** Petitions disposed of

**Judgement :**

ORDER

1. The petitioner is common in all these petitions. He has questioned the cognizance taken for the offence under Section 138 of the Negotiable Instruments Act and the proceedings initiated by the learned XII Additional Chief Metropolitan Magistrate, Bangalore.

2. The petitioner herein issued 7 cheques for Rs. 5 lakhs each dated 19-8-1998 in favour of the respondent. When the cheques were presented for encashment through Bank of India they were bounced with an endorsement 'Account closed' dated 22-8-1998. Therefore, the respondent caused a legal notice as required under Section 138(b) of the Negotiable Instruments Act and thereafter filed complaints before the learned Chief Metropolitan Magistrate, Bangalore through the power of attorney, who recorded the sworn statements of the power of attorney, took cognizance for the offence under Section 138 of the Negotiable Instruments Act and issued summons.

3. The petitioner appeared before the learned Chief Metropolitan Magistrate and secured bail and thereafter questioned the order of the learned Chief Metropolitan Magistrate taking cognizance for the alleged offence.

4. The main contention of the learned Counsel for the petitioner Sri C.V. Nagesh is that the presentation of the complaints by the power of attorney itself is not maintainable. Furthermore, the recording of the sworn statement of the power of attorney is bad in law since the power of attorney is not the payee or the holder in due course of the alleged cheques. Therefore, contended that the proceedings initiated were bad in law. Accordingly, prayed to allow the petitions.

5. On the other hand, the learned Counsel for the respondent contended that there is no bar as such for the power of attorney to present the complaint and the procedure followed by the learned Chief Metropolitan Magistrate in recording the sworn statement and issuing of summons does not call for interference. Therefore, prayed to dismiss all the petitions.

6. In the light of the submissions, the short point for consideration that arises is:

Whether the power of attorney has no authority to present the complaint? If so, the proceedings were liable to be quashed?

7. Admittedly, the complaints came to be presented by the power of attorney. Insofar as this aspect is concerned, the Kerala High Court while considering a similar question regarding the authority of the power of attorney holder to present

a complaint, in the case of Pandalai v Jacob C, Alexander and Anr., at para 14 of its order has observed thus:

'14. In the decision in C.B.S. Gramophone Records and Tapes (India) Limited v Noorudeen, a Single Judge of this Court has held that complaint filed by the authorised representative of a company under Section 142 of the Negotiable Instruments Act is maintainable.

In the decision in Hamsa v Ibrahim, a Single Judge of this Court has held that a power of attorney of a payee or holder in due course can make a complaint under Section 142 of the Negotiable Instruments Act'.

8. In the light of the above reasonings, I am also of the clear view that the power of attorney of the payee or holder in due course is competent to present the complaint. That insofar as the aspect of recording of the sworn statement is concerned, that has to be examined afresh after providing an opportunity to both sides. The further submission of the petitioner insofar as whether he had issued any cheques and on presentation whether they were dishonoured are all purely a matter of evidence.

9. In view of the facts and circumstances, the matter is remitted back to the learned Chief Metropolitan Magistrate, Bangalore to consider the legal contentions that may be raised by both the parties and proceed in accordance with law.

10. With the said observations, these petitions are disposed of.

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