

Ramesh Vs. Ganeshchandra and ors.

Ramesh Vs. Ganeshchandra and ors.

SooperKanoon Citation : sooperkanoon.com/511889

Court : Madhya Pradesh

Decided On : Nov-27-2003

Reported in : IV(2004)BC475

Judge : S.L. Kochar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 200, 202 and 482;
[Negotiable Instruments Act, 1881](#) - Sections 138

Appeal No. : M. Cr. C. No. 2150 of 2003

Appellant : Ramesh

Respondent : Ganeshchandra and ors.

Advocate for Def. : V.P. Saraf, Adv. for the Respondent Nos. 1 and 2

Advocate for Pet/Ap. : Anil Oza, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S.L. Kochar, J.

1. This petition under Section 482 of the Cr.P.C. has been filed by the applicant mainly on the ground that the complaint was filed by the power of attorney holder

who is not the payee or holder of cheque in due course. Therefore, the complaint filed by the power of attorney is not maintainable.

2. The learned Counsel for the applicant placed reliance on III (2002) BC 77 (DB)=2002 Cr.L.J. 2621 (S.P. Sampathy v. Smt. Manju Gupta) On the other hand, the contention of the learned Counsel for the non-applicant/complainant is that as per the Power of Attorney Act and the judgment rendered by M.P. High Court (Gwalior Bench) In I (2002) BC 113=2001 Cr.L.J. 3623, Dr. Anil Kumar and Anr. v. Sant Prakash Gupta, the complaint under Section 138 of the Negotiable Instruments Act be presented by the person holding power of attorney, payee or the holder of the cheque, Learned Counsel has also placed reliance on the Supreme Court judgment rendered in MMTC Ltd. and Anr. v. Medchi Chemicals and Pharma (P) Ltd., VIII (2001) SLT 83=IV (2001) CCR 316 (SC)=AIR 2002 SC 182 and submitted that in the case in hand, though the complaint was filed by the holder of power of attorney on behalf of the complainant, but later on this defect has been cured. The complainant himself has appeared and signed on the complaint. This was done in pursuance of the revisional order passed by the lower Revisional Court. In MMTC Ltd. (supra) the Supreme Court has held that though the complaint was filed on behalf of the company who was the holder of the cheque by unauthorised person, but the same defect is curable and on this account, the complaint cannot be quashed.

3. Having heard the learned Counsels for the parties this Court is of the view that in view of the provisions of Power of Attorney Act, the complaint can be presented by the holder of Power of Attorney, but for the purpose of further prosecution i.e. under Section 200 and 202, the presence of the complainant is essential and if he appears and gives statement before the Court, then there is no defect in filing the complaint and the same shall be treated as cured.

4. In this view of the matter, as discussed above, there is no substance in this petition. The same is hereby dismissed.