

(2009) 02 RAJ CK 0013
Rajasthan High Court (Jaipur Bench)
Case No: None

Agarwal Trading Co. and
Another

APPELLANT

Vs

Nawal Kishore, Latoor Lal and
Babu Lal

RESPONDENT

Date of Decision: Feb. 5, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 200, 482
- Negotiable Instruments Act, 1881 (NI) - Section 138, 142

Citation: (2010) 1 RCR(Civil) 398 : (2009) 4 RLW 3109

Hon'ble Judges: Bhanwaroo Khan, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Bhanwaroo Khan, J.

The respondent Nawal Kishore through his General Power of Attorney Holder Roop Chand Bansal filed a complaint u/s 138 of the Negotiable Instruments Act (hereinafter referred to as "the Act") with the averments that he wanted to invest his money in someone else's business on interest basis, hence an amount of Rs. 50,000/- was given to Shri Roop Chand Bansal, General Power of Attorney Holder, who in turn handed over this amount to the accused with the stipulated interest and when the money was demanded back a cheque was given in the name of Nawal Kishore which was bounced and a statutory notice was served but no payment was made by the accused. Therefore, a complaint by the attorney Holder u/s 138 of the Act was filed in the Court of Addl. Chief Judicial Magistrate No. I, Kota. The trial court after recording statement of the General Power of Attorney Holder vide order dated 1.12.2005 took cognizance against the petitioners herein u/s 138 of the Act. Feeling aggrieved of the said order of the trial court, the petitioners have approached this Court by filing the present petition u/s 482 Cr.P.C.

2. Heard learned Counsel for the petitioners.

3. Learned Counsel for the petitioners has submitted that a complaint u/s 138 of the Act only signed by General Power of Attorney Holder is not maintainable because as per Section 142(a) of the Act for taking cognizance of the offence u/s 138 of the Act, a condition precedent is that the complaint should have been filed only by the payee and in the instant case it is the Power of Attorney Holder and not the payee who has filed the complaint under his signatures. So the order of cognizance passed by the trial court is in violation of the provisions of Section 142A of the Act because it strictly prohibits any other person and authorises only the payee of the cheque to file complaint and admittedly in the present case, General Power of Attorney Holder who lodged the complaint is not a payee. Placing reliance on a D.B. Judgment of the Andhra Pradesh High Court in the matter of [S.P. Sampathy Vs. Smt. Manju Gupta and Another](#), Ravi Kumar and Anr. v. R. Ramalingam 2005 (1) DCR 329) and Smt. Lalita Hundiya v. Govind Narayan Khuteta and Anr. 2008 WLC 324, learned Counsel for the petitioners has further contended that if the payee has not filed the complaint u/s 138 of the Act, that cannot be taken a note of and no cognizance can be taken on the complaint which was otherwise filed by a third person.

4. Having heard learned Counsel for the petitioners, I have gone through the material available on the record of the case and also the provisions of the Act.

5. It will be useful to refer the relevant provisions of Section 142 of the Act which reads thus:

142. Cognizance of offences:

Notwithstanding any thing contained in Code of Criminal Procedure, 1973 (2 of 1974):

(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.

6. For taking cognizance of the offence u/s 138 of the Act, Section 142 speaks for two conditions; (a) the complaint should be made in writing and (b) the complainant should be payee. It is not disputed that in the instant case General Power of Attorney Holder is not a payee but he has filed the complaint in the capacity of a power of attorney Holder of the payee Nawal Kishore and not in his own capacity. Cognizance of an offence can be taken by a Magistrate after recording statement of witnesses u/s 200 Cr.P.C. but if there is any restriction in special statute then those conditions should be fulfilled before taking cognizance. Section 142 of the Act has a non obstante clause which debars the taking of cognizance of the offence u/s 138 of the Act if the complaint is not filed by the payee as complainant.

7. In the case in hand as per the statement of Roop Chand Bansal, the General Power of Attorney Holder Rs. 50,000/- was received by him from Nawal Kishore to be

invested somewhere to earn interest who in turn gave the same to the accused and for repayment of the same a cheque was issued by them in the name of Nawal Kishore which was later on dishonoured. Roop Chand Bansal has not filed this complaint in his own capacity as individual but as a power of attorney Holder of Nawal Kishore. He has submitted the complaint on behalf of Nawal Kishore and not in his individual capacity. The complaint simplicitor is in the name and on behalf of the "payee". Therefore, the requirements of Section 142 of the Act are fulfilled.

8. The observation so made is fortified by the judgment of the Apex Court in the matter of *Shanker Finance and Investments v. State of Andhra Pradesh and Ors.* 2008) 8 SCC 536 wherein their Lordships of the Supreme Court after taking into consideration the provisions of the Act and various judgments have held:

The 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 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.

Further it was held:

Attorney Holder cannot file the complaint in his own name as if he was the complainant. He can initiate criminal proceedings on behalf of his principal.

9. The circumstances of the present case are similar. In the instant case, the power of attorney Holder has filed the complaint not in his individual capacity but he has initiated the criminal proceedings on behalf of his principal Nawal Kishore and the complaint filed also speaks so.

10. In the light of the decision of the Apex Court in the matter of *Shanker Finance & Investments (supra)*, the judgments cited by the learned Counsel for the petitioner are of no help as the same are contrary to what the Apex Court has decided. The cited judgments in the matters of *S.P. Sampathy*, *Ravi Kumar* and *Smt. Lalita Hundiya (supra)* in the light of the judgment of the Apex Court in the matter of *Shanker Finance (supra)* are no more a good law.

11. In the instant case, the requirement of Section 142 of the Act is completely fulfilled and, therefore, the order of taking of cognizance of the offence u/s 138 of the Act by the trial Court on the complaint filed by General Power of Attorney Holder on behalf of his principal is neither illegal nor amounts to an abuse of process of law. Under the circumstances, no interference is required in the impugned order and this criminal misc. petition deserves to be dismissed.

12. Consequently, the misc. petition stands dismissed.

13. Office is directed to return the record of the case to the concerned court immediately.