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(2010) 08 CAL CK 0009

Calcutta High Court

Case No: C.R.R. No. 3966 of 2009

Basanta Das — APPELLANT

Vs

Ratna Mondal — RESPONDENT

Date of Decision: Aug. 11, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 200
- Negotiable Instruments Act, 1881 (NI) - Section 138, 142
- Penal Code, 1860 (IPC) - Section 34, 420

Citation: (2013) ALLMR(Cri) 141 : (2011) 5 CHN 393

Hon'ble Judges: Mrinal Kanti Sinha, J

Bench: Single Bench

Advocate: Ranjit Kumar Roy, Chitta Ranjan Mondal, for the Appellant; Nirmal Kumar Manna, Kamal Krishna Manna, for the Respondent

Final Decision: Dismissed

Judgement

Mrinal Kanti Sinha, J.

Heard learned Counsel appearing for the parties. This revisional application has been directed against the order dated 16.07.2009 passed by the learned 2nd Judicial Magistrate, Sealdah in Case No. C-722 of 2007, whereby the learned Judicial Magistrate, 2nd Court, Sealdah, 24-Parganas, has permitted the complainant to put her signature on the petition of the complainant and the Vakalatnama and the complainant has further been permitted to continue with the proceedings through her constituted Attorney Samar Mondal. It is the case of the petitioner that the petitioner along with two other persons, namely, Ranjit Mondal and Tarapada Mistry purchased some land from the opposite parties Ms. Ratna Mondal and others, and several cheques were issued by the purchasers in the name of their vendors including the opposite party, Ms. Ratna Mondal, named in their sale deed. A cheque for the amount of Rs. 1,75,000/- bearing No. 736917 dated 23.07.2007 was issued by

the present petitioner, Basanta Das, one of the purchasers in favour of the opposite party, Ms. Ratna Mondal. Before the petitioner filed notice before the bank for stopping the payment of the aforesaid cheque by his letter dated 27.8.2007, the bank authority, stopped the payment and the same was informed to the opposite party by their cheque returning memo dated 31.8.2007 with the endorsement "payment stopped by the drawer". But in spite of having previous knowledge from the petitioner regarding such: stopping of payment, the opposite party without replying or giving khas possession of the sold property sent demand notice to the petitioner u/s 138 of the N.I. Act demanding the amount of the said cheque on 05.09.2007. The petitioner sent reply to the said notice u/s 138 of the N.I. Act on 13.9.2007 annexing the previous notice dated 31.8.2007 which was duly received by the opposite party on 18.9.2007. But the opposite party filed the complaint case bearing No. C-722 of 2007 u/s 138 of the N.I. Act on 11.10.2007 before the learned Additional Chief Judicial Magistrate, Sealdah, and thereafter the matter was transferred to the 2nd Court of learned Judicial Magistrate, Sealdah, for trial. The petitioner also filed a complaint case being Complaint Case No. 9643 of 2007 under sections 420/34 of the Indian Penal Code against the opposite party in the Court of the learned Chief Judicial Magistrate, Alipore. The opposite party filed the said complaint case with the General Power of Attorney issued in favour of Samar Mondal, and that complaint petition was not signed by the payee at the time of filing the same, and that was signed by one Samar Mondal and that complaint was filed without any signature of Ms. Ratna Mondal both in the complaint petition and in the Vokalatnama, and thereafter the opposite party filed a petition praying for allowing her to sign the complaint petition and Vokalatnama after a long period of more than one year on 7.11.2008 without sufficient cause or ground.

3. The matter was heard by the learned Judicial Magistrate, 2nd Court, Sealdah and hearing the learned counsel for both the sides at length, learned Magistrate allowed the petition filed by the complainant and permitted her to put signature on the petition of complaint and the Vokalatnama, and the complainant was further permitted to continue with the proceeding through her constituted Attorney Samar Mondal.

4. Being aggrieved by and dissatisfied with the aforesaid order of the learned Judicial Magistrate, 2nd Court, Sealdah, 24-Parganas, the present petitioner has filed the instant revisional application. The opposite party is contesting the matter denying the case of the petitioner, though no affidavit-in-opposition has been filed.

5. The point for consideration in this matter is whether the learned Judicial Magistrate concerned was legal, correct, proper and justified in passing the impugned order.

6. It is submitted by Mr. Roy, learned Counsel appearing for the petitioner, that in spite of having previous knowledge about the stopping of payment, the opposite party placed the said cheque in the bank for encashment, and so she was not

justified in filing the said complaint case bearing No. C-722 of 2007, which she filed intentionally with some ulterior motive and once she has filed the said complaint case through Samar Mondal, her General Power of Attorney holder, and has prayed for continuing with the proceeding through her constituted attorney Samar Mondal, and then she has again prayed for putting her signature on the petition of complaint and the Vokalatnama herself, and as such, filing of her complaint was not proper, and therefore her complaint and the finding of the learned Judicial Magistrate in that regard are liable to be quashed.

7. Mr. Manna, learned Counsel appearing for the opposite party, has contended that as because the cheque issued by the petitioner was dishonoured by the bank, so she was compelled to file the said complaint u/s 138 of the N.I. Act, and after she was married her surname was changed from Mondal to Das, for which it was difficult for her to personally conduct the case, and so she filed the said complaint case through her constituted Attorney Samar Mondal, but as a complainant she intended to sign the complaint and the Vokalatnama herself as the aggrieved, and the complaint and order passed by the learned Judicial Magistrate, 2nd Court, Sealdah, allowing her petition were not illegal or incorrect, and are not liable to be quashed.

8. It appears that by the impugned order learned Judicial Magistrate concerned allowed the petition of the complainant and the complainant was permitted to put her signature on the petition of complaint and the Vokalatnama, and was further permitted to continue with the proceedings through her constituted Attorney Samar Mondal. As an aggrieved person, the complainant was well within her right to file the complaint before the Court to ventilate her grievance when the cheque issued in her favour was not honoured as per her allegation. But the question is whether an aggrieved person shall have to file a complaint herself or she may file a complaint through some other person as her General Power of Attorney holder.

9. As per the provisions of section 200 of the Code of Criminal Procedure, a Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate. The object of such examination of the complainant is to satisfy the Magistrate concerned about the existence of prima facie case against the person accused of the offence, and to ensure that such person is not harassed by false and vexatious complaint by issuance of process, but where the Attorney holder of the complainant is in charge of his business, then the General Power of Attorney holder of the complainant is competent to sign the complaint as complainant. It has been held by the Hon''ble Apex Court in the case of Shankar Finance and Investments Vs. State of Andhra Pradesh and Others, at page 541 that-.....

"12. This Court has always recognised that the power of attorney holder can initiate criminal proceedings on behalf of his principal".

10. In case of a complaint u/s 138 of the N.I. Act signed by the Power of Attorney holder of the complainant that is maintainable, and the requirements of section 142 of the said Act are to be fulfilled, and the Attorney holder is the agent of the grantor when he authorizes the Power of Attorney holder to initiate legal proceedings and the Power of Attorney holder accordingly initiates legal proceedings. He does so as the agent of the grantor and the initiation of such legal proceedings is by grantor represented by his Power of Attorney holder, and not by the Power of Attorney holder in his personal capacity.

11. In the instant case, the complainant being the ''payee'' legally authorized her agent, Samar Mondal, to initiate the case against the accused, and the said Samar Mondal as Power of Attorney holder of the ''payee'' represented his principal or ''payee'', the complainant, and he was legally competent enough to lodge the complaint or initiate legal proceeding as agent of the complainant or principal. As per provisions of section 142 of the N.I. Act, 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 (Power of Attorney Holder) in due course of the cheque. In the instant case the power of attorney holder of the complainant, namely, Samar Mondal, lodged the complaint or initiated the legal proceedings against the accused for the present petitioner u/s 138 of the N.I. Act by a written complaint and he was authorized to do that by the ''payee'', the complainant. From that point of view, the learned Magistrate concerned has not done anything wrong by permitting the complainant to initiate the proceedings through her power of Attorney Holder on behalf of his principal, ''payee'' complainant.

12. Learned Magistrate concerned has permitted the complainant to put her signature on the petition of complaint and the Vokalatnama also while permitting her to continue with the proceedings through her constituted attorney Samar Mondal. But when the complainant has been permitted to continue with the proceedings through her constituted attorney holder Samar Mondal, then there was no necessity of permitting the complainant to put her signature on the petition of complaint and the Vokalatnama. But even if the complainant signs on the petition of complaint and the Vokalatnama, that would not be irregular in view of the fact that the power of attorney holder of the complainant has already been permitted to continue with the proceedings as her constituted attorney.

13. Having regard to the submissions made by the learned Counsel on behalf of the parties, materials on record and other circumstances, it appears that the learned Judicial Magistrate, 2nd Court, Sealdah, 24-Parganas, was not illegal, incorrect, improper or unjustified in passing the impugned order permitting the complainant to continue with the proceedings through her constituted attorney Samar Mondal. As such, the said legal proceeding u/s 138 of the N.I. Act was not irregular or was not without authorization, and so there is no question of quashing of the same and the matter requires to be disposed of after trial.

14. As it appears that the impugned order of the learned Judicial Magistrate, 2nd Court, Sealdah, 24-Parganas, suffers from no illegality, infirmity and the learned Magistrate concerned was not illegal, incorrect, improper or unjustified in passing the impugned order, so there is no reason to interfere with the same and as such, that order stands.

15. The revisional application being C.R.R. 3966 of 2009 stands dismissed.

16. Let a copy of this order be sent to the learned Judicial Magistrate, 2nd Court, Sealdah, 24-Parganas, with direction to dispose of the complaint case being C-722 of 2007 u/s 138 of the N.I. Act in accordance with law as early as possible preferably within a period of six months from the date of communication of this order. Criminal Department is directed to supply xerox certified copy of this order, if applied for, as expeditiously as possible.