

**Andhra Pradesh High Court – Amravati**

**Bench: Justice Tarlada Rajasekhar Rao**

Decided Date: 9 November, 2023

**CRIMINAL PETITION No.2885 OF 2019**

A Rafeeq .....Petitioner

Versus

C Vijaya .....Respondent

**Legislation:**

Section 200, 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.)

Sections 138, 142, 145 of the Negotiable Instruments Act, 1881 (NI Act)

Section 60, 85 of the Indian Evidence Act

Sections 1A and 2 of the Powers of Attorney Act, 1882

**Subject:** Criminal Petition filed under Section 482 Cr.P.C. for quashing a complaint in C.C.No 225 of 2018 related to an offense under Sections 138 and 142 of the Negotiable Instruments Act, 1881. The petition involved issues of a fraudulent cheque, misuse of power of attorney, and procedural defects in criminal proceedings.

**Headnotes:**

**Criminal Petition – Quashing of Complaint – Petition under Section 482 Cr.P.C. for quashing complaint in C.C.No 225 of 2018 for offense under Sections 138 and 142 of the Negotiable Instruments Act, 1881 – Accused sought to quash complaint alleging fraudulent cheque and misuse of power of attorney. [Para 1, 5]**

**Cheque Fraud – Accusation of issuing a fraudulent, colored Xerox copy of a cheque – Complainant alleged the accused issued a cheque for Rs. 2,50,00,000/- which was returned due to being a fraudulent copy. [Para 4]**

**Power of Attorney – Validity and Use in Criminal Proceedings – Argument that power of attorney holder cannot file a complaint in their own name; need for explicit assertion of knowledge in the transaction by the power of attorney holder – Reliance on judgments of Apex Court for interpretation. [Para 5, 6, 7, 10, 13]**

**Procedural Defects – Assessment of technical defects in legal proceedings – Court's consideration of whether procedural**

discrepancies, such as mentioning a future bouncing date of a cheque in a power of attorney, are technical in nature or affect the merits of the case. [Para 11, 12, 15]

Trial Proceedings – Necessity of detailed factual examination – Court's emphasis on the need for a full trial to ascertain factual details and resolve disputes related to the issuance and misuse of the cheque and the power of attorney. [Para 17, 18, 19]

Decision – Dismissal of Criminal Petition – Court's refusal to quash the complaint at the initial stage and direction for the continuation of the trial to determine the factual aspects and decide on the merits of the case. [Para 17, 18, 19, 20]

**Referred Cases:**

- A.C. Narayana Vs. State of Maharashtra and another (2014)  
11 SCC 790
- TRK Krosaki Refractories Ltd., vs SMS Asia Private Ltd.  
(2022) 7 SCC 612

- Uday Shankar Triyar v. Ram Kalewar Prasad Singh (2006) 1 SCC 75
- M.M.T.C. Ltd. V. Medchl Chemicals and Pharma (P) Ltd. (2002) 1 SCC 234
- Janki Vashdeo Bhojwani v. Indusind Bank Ltd. (2004) 3 SCC 584
- MSR Leathers vs S. Palaniappan (2013) 1 SCC 177
- Vishwa Mitter v. O. P. Poddar (1983) 4 SCC 701

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**ORDER:**

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), praying to call for the record and to quash the complaint in C.C.No 225 of 2018 on the file of XII Additional Metropolitan Magistrate, Gannavaram, Krishna District.

2. The petitioner herein is the accused and the 1<sup>st</sup> respondent is complainant. To avoid confusion, hereinafter the petitioner will be referred as „accused“ and that of 1<sup>st</sup> respondent as „complainant“.

3. Precisely, the facts of the case are that:

The complainant and the brother of the accused are bosom friends. Both the complainant and the GPA holder were brother and sister having joint family lands situated in Kaltura of Agiripilli Mandal and the accused used to receive amounts from the complainant's brother for his business purpose and used to repay the same amount. On 11.04.2016, the accused has borrowed an amount of Rs.2 crores from the complainant's brother for the purpose of development of business and for his family expenses and agreed to repay the same together with interest @ Rs.24% per annum and when demanded, either by complainant's brother or her brothers, the accused has executed a demand promissory note in favour of the complainant's brother, in which the complainant is the first attestor and she is having knowledge of every transaction with the accused and her brother.

4. Thereafter, in spite of several demands made by the complainant as well as her brother to discharge the legally enforceable debt, on 16.01.2018, the accused issued a cheque in favour of the complainant's brother, vide cheque bearing No.779922 drawn on ICICI Bank Limited, Hyderabad Branch, for Rs.2,50,00,000/-. The complainant's brother has presented the

said cheque in his bank, i.e., Axis Bank, Gannavaram for the purpose of collection, but on 19.02.2018, the Branch Manager, Axis Bank, Gannavaram informed the complainant's brother that the cheque issued by the accused is a fraudulent as the cheque is coloured Xerox copy of cheque and return memo issued by the ICICI Bank along with the counter letter to the complainant and the same was confirmed by the Branch Manager, ICICI Bank, Chennai in its cheque returned memo dated 23.01.2018. On receiving the memo from the bank authorities, the complainant has issued a legal notice dated 16.03.2018 to the accused and he received the postal acknowledgment dated 19.03.2018 and the accused has issued a reply notice dated 27.03.2018 and thereafter, the complainant has presented the present complaint, which is impugned in the present Criminal Petition to take action against the accused for the offence punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (hereinafter referred, „the NI Act“, for short).

5. Learned counsel for the accused would agitate to quash the C.C.No.225 of 2018 in the present Criminal Petition on two

grounds: viz., (i) the GPA was executed on 29.01.2018, but the recital in the GPA shows that the cheque was bounced on 19.02.2018 and a future bouncing waste was mentioned in the same and that itself is evident that the GPA is ante-dated, on such GPA the complainant can maintain the complaint; and the second ground that is agitated by the learned counsel for the accuser is that GPA holder can only initiate criminal proceedings on behalf of the principal under Section 200 Cr.P.C. and the GPA holder cannot file a complaint in her own name as if her is a complainant and the complaint would implicitly show that GPA holder herself has filed the complaint, as such, the complaint is not valid and hence pray to quash the complaint.

6. Learned counsel for the accused relied on the judgment of Apex Court in *A.C.Narayana Vs. State of Maharashtra and another*<sup>1</sup>, wherein it is held that where the payee is a proprietary concerned, the complaint or offence punishable under Section 138 of N.I. Act can be filed: (i) by the proprietor of the proprietary concern, describing himself as sole proprietor of the 'payee'; (ii) the proprietary concern, describing itself as sole

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<sup>1</sup> (2014) 11 SCC 790

proprietary concern, represented by its sole proprietor; and (iii) the proprietor or the proprietary concerned represented by attorney holder under a power of attorney executed by the sole proprietor. However, GPA holder cannot file a complaint in his own name as if her is a complainant that GPA holder can only initiate criminal proceedings on behalf of the principal under Section 200 Cr.P.C. and Section 60 of the Indian Evidence Act.

7. The learned counsel for the complainant would submit that accused has issued the coloured xerox cheque in order to deceive the complainant and the accused lodged a complaint to Gannavaram police, which is subject matter of FIR No.64 of 2019 for loss of cheque after 7 months after filing of the complaint and the police has referred the FIR as false and the date mentioned in GPS as 29.01.2018 is typographical mistake and the mistake can be explained during the course of trial and it can be subsequently remedied and the defect need not necessarily be fatal and he relies on the Judgment of the Apex Court in *TRK Krosaki Refractories Ltd., vs SMS Asia Private Ltd.*<sup>2</sup>, for the proposition that:

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<sup>2</sup> (2022) 7 SCC 612



“The employment of the terms “specific assertion as to the knowledge of the power of attorney holder” and such assertion about knowledge should be “said explicitly” as stated in A.C. Narayanan (supra) cannot be understood to mean that the assertion should be in any particular manner, much less only in the manner understood by the accused in the case. All that is necessary is to demonstrate before the learned Magistrate that the complaint filed is in the name of the “payee” and if the person who is prosecuting the complaint is different from the payee, the authorisation therefor and that the contents of the complaint are within his knowledge. When, the complainant/payee is a company, an authorized employee can represent the company. Such averment and prima facie material is sufficient for the learned Magistrate to take cognizance and issue process. If at all, there is any serious dispute with regard to the person prosecuting the complaint not being authorized or if it is to be demonstrated that the person who filed the complaint has no knowledge of the transaction and, as such that person could not have instituted and prosecuted the complaint, it would be open for the accused to dispute the position and establish the same during the course of the trial”.

8. Learned counsel for the complainant would submit that the drawee bank i.e., Branch Manager, Axis Bank, Gannavaram, has informed the drawee about the bouncing of cheque and

thereafter, the complainant has got issued a legal notice intimating the bouncing of cheque to the accused and the accused got issued a reply to the legal notice that he has not taken the stand which is orally raised in the Criminal Petition.

9. Point:

Section 85 of the Evidence Act would envisage that which is extracted below:

"85. Presumption as to powers of attorney - The Court shall presume that every document purporting to be a Power of Attorney, and to have been executed before, authenticated by, notary public, or any Court, Judge, Magistrate, Indian Consul, or Vice Consul, or representative of the Central Government, was so executed and authenticated."

10. The objective of execution of the Power of Attorney is to give authority to the person to do particular act on his behalf, whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1A and Section 2 of the Powers of Attorney Act, 1882). It is not a financial term nor an eligibility term but merely the authority to file the complaint.

11. In *Uday Shankar Triyar v. Ram Kalewar Prasad Singh*<sup>3</sup>, it is held as follows:

"The object of Courts is to decide the rights of parties and not to punish them for mistakes which they make in the conduct of their cases by deciding otherwise than in accordance with their rights ... Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy.

If therefore there was an inadvertent technical violation of the rule in consequence of a bona fide mistake, and the mistake is subsequently remedied the defect need not necessarily be fatal."

12. This Court held that procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use. The Court held as under:-

"17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable

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<sup>3</sup> (2006) 1 SCC 75

should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:

- (i) where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;
- (ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;
- (iii) where the non-compliance or violation is proved to be deliberate or mischievous;
- (iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;
- (v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant."

13. While holding that there is no serious conflict between the decisions in *M.M.T.C. Ltd. v. Medchl Chemicals and Pharma (P) Ltd.*<sup>4</sup>, and *Janki Vashdeo Bhojwani v. Indusind Bank Ltd.*<sup>5</sup>, by

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<sup>4</sup> (2002) 1 SCC 234

<sup>5</sup> (2004) 3 SCC 584

clarifying the position and answered the questions in the following manner:

- (i) Filing of complaint petition under Section 138 of N.I 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 N.I 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 N.I Act and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the Court, nor to examine the complainant of his witness upon oath for taking the decision whether or not to issue process on the complaint under Section 138 of the N.I. 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".

14. In *MSR Leathers vs S. Palaniappan*<sup>6</sup>, decided by the Hon<sup>ble</sup> Supreme Court in **paragraph No.29**, it was held that:

"It is trite that the object underlying Section 138 of the NI Act is to promote and inculcate faith in the efficacy of banking system and its operations giving creditability to negotiable instruments in business transactions and to create an atmosphere of faith and reliance by discouraging people from dishonouring their commitments which are implicit when they pay their dues through cheques. The provision was intended to punish those unscrupulous persons who issued cheques for discharging their liabilities without really intending to honour the promise that goes with the drawing up of such a negotiable instrument. We must add that one of the salutary principles of interpretation of statutes is to adopt an interpretation which promotes and advances the object sought to be achieved by the legislation, in preference to an interpretation which defeats such object.

15. This discrepancy in the present Criminal Petition is about mentioning the future date of bouncing of the check, i.e., the

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<sup>6</sup> (2013) 1 SCC 177

date of February 19, 2018, in GPA, which was executed on 29<sup>th</sup> January, 2018, and that has to be explained by the complainant. Whether the discrepancy in the present case can be stated to be of a technical nature or whether it would go to the root of the case and cause prejudice to the accused, whether it is a curable defect, whether the complainant has been able to explain this discrepancy, and whether it is permissible for the complainant to explain away this discrepancy is a question of fact that should be raised during the trial.

16. The Apex Court has, as far back as, in the case of *Vishwa Mitter v. O. P. Poddar*<sup>7</sup>, held that it is clear that anyone can set the criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate entitled to take cognizance. It has been held that no court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. It has been held that if any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, then the complainant

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<sup>7</sup> (1983) 4 SCC 701

requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute.

17. Keeping in view the above proposition of law which has been relied upon by the learned counsel for the both the parties, this is Court is of the opinion that the pleas taken that no such cheques were issued by respondents accused and that the said cheques had got lost which have been misused by the complainant and the GPA is ante-dated and that the GPA holder can only initiate criminal proceedings on behalf of the principal under Section 200 Cr.P.C. GPA holder cannot file a complaint in her own name as if her is a complainant are all factual aspects which cannot be decided in proceeding under 482 Cr.P.C. as a detailed finding would be required after considering the entire facts which the parties would be adducing before the trial Court and then only conclusive finding would be recorded in this regard. At the initial stage, when the accused has been merely summoned to face the trial, it would be highly prejudicial and would result in miscarriage of justice if the trial in the present case is nipped in the bud. Therefore, the opinion of this Court is



that the present application deserves to be dismissed and is, accordingly, dismissed.

18. The question whether disputed GPA on the basis of which the complainant has filed the complaint and basing upon a forged or in-genuine and that the GPA holder can only initiate criminal proceedings on behalf of the principal under Section 200 Cr.P.C. GPA holder cannot file a complaint in her own name as if her is a complainant, document is yet to be decided by the Court that mere taking cognizance on the said GPA by the learned Magistrate is of no consequence at present to quash the complaint. And the trial Court is hereby specifically directed to answer the issue in this regard.
19. The question whether disputed GPA on the basis of which the complainant has filed the complaint and basing upon a forged or genuine document is yet to be decided by the Court and that mere taking cognizance on the said GPA by the learned Magistrate is of no consequence at present to quash the complaint, accordingly criminal petition liable to be dismissed, it is accordingly dismissed.

20. Accordingly, the Criminal Petition is dismissed. As a sequel, interlocutory applications, pending if any in this case, shall stand closed.

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