

09.06.2010

**C.R.R. No. 1637 of 2010**

**In re : Indian Structural Engineering Company Pvt. Ltd. & Anr. ...  
Petitioners**

**POINTS**

Power Of Attorney – Holder of power of attorney files the complaint relating to an offence under section 138 of N.I. Act – Initial deposition shows personal knowledge of the holder of power of attorney – Challenge to proceeding if maintainable – Negotiable Instruments Act 1881, S 138 , 141 & 145.

**FACTS**

The subject-matter of challenge in this Criminal Revision is a proceeding relating to an offence punishable under Sections 138/141 of the Negotiable Instruments Act on the ground that the holder of power of attorney had no personal knowledge about the incident alleged.

**HELD**

A power of attorney holder who signed the petition of complaint and had personal knowledge about the transaction can very well file a complaint relating to an offence punishable under Section 138 of the Negotiable Instruments Act. Para 5

**CASES CITED :-**

***M/s. Shankar Finance & Investments –versus- State of Andhra Pradesh & Ors., reported in 2008 (8) SCC 536***

Mr. Uday Chandra Jha

Mr. Samit Kumar Mondal ... for the petitioners

**THE COURT.** 1) Heard Mr. Uday Chandra Jha, Learned Counsel, appearing on behalf of the petitioners. Perused the impugned order, materials on record as well as the case laws cited by him.

2) The subject-matter of challenge in this Criminal Revision is a proceeding relating to an offence punishable under Sections 138/141 of the Negotiable Instruments Act.

3) Mr. Jha, Learned Counsel, submitted before this Court he is challenging this proceedings only on the ground that the petition of complaint has been filed by the power of attorney holder viz. one Mr. Himadri Chatterjee, who had no personal knowledge about the facts circumstances of the case. According to Mr. Jha, admittedly the power of attorney was executed on May 19, 2006, whereas the Cheque in question was issued on October 1, 2005, but in this case, only the power of attorney holder was examined under Section 200 of the Code.

4) In support of his contention, Mr. Jha relied on a decision of the Hon'ble Supreme Court in the case of *M/s. Shankar Finance & Investments – versus- State of Andhra Pradesh & Ors., reported in 2008 (8) SCC 536*. He referred paragraph nos. 15 as well as 16 of the said judgment. The relevant paragraphs which have been referred by Mr. Jha from the aforesaid decisions are quoted below:

*“15. Where the proprietor of the proprietary concern has personal knowledge of the transaction and the proprietor has signed the complaint, he has to be examined under Section 200 of the Code. A power of attorney holder of the complainant who does not have personal knowledge, cannot be examined. But where the attorney holder of the complainant is in charge of the business of the payee-complainant and the Attorney holder alone is personally aware of the transactions, and the complaint is signed by the attorney holder on behalf of the payee-complainant, there is no reason why the attorney holder cannot be examined as the complainant. We may, in this connection, refer to the decision of this Court in *Janki Vashdeo Bhojwani v. Indusind Bank Ltd.* [2005 (2) SCC 217], where the scope of an attorney holder acting on behalf of the principal in a civil suit governed by Code of Civil Procedure was examined. This Court observed:*

*16. In regard to business transactions of companies, partnerships or proprietary concerns, many a time the authorized agent or attorney holder may be the only person having personal knowledge of the particular transaction; and if the authorized agent or attorney-holder has signed the complaint, it will be absurd to say that he should not be examined under Section 200 of the Code, and only the Secretary of the company or the partner of the firm or the proprietor of a concern, who did not have personal knowledge of the transaction, should be examined. Of course, where the cheque is drawn in the name of the proprietor of a proprietary concern, but an employee of such concern (who is not an attorney holder) has knowledge of the transaction, the payee as complainant and the employee who has knowledge of the transaction, may both have to be examined. Be that as it may. In this case we find no infirmity.”*

5) Having gone through the aforesaid observation of the Hon'ble Supreme Court, it appears to me that a power of attorney holder who signed the petition of complaint and had personal knowledge about the transaction can very well file a complaint relating to an offence punishable under Section 138 of the Negotiable Instruments Act.

6) Now, having gone through the materials on record, I find that the complaint was filed by one Himadri Chatterjee, the power of attorney holder, and it is the said Himadri Chatterjee, who signed the petition of complaint. Apart from that, in connection with this case the initial deposition of the said Himadri Chatterjee was filed invoking Section 145 of the Negotiable Instruments Act, that is, by way of evidence on affidavit. I find in the said affidavit the power of attorney holder in detail described the facts and circumstances of the case and averred that those statements are true to his knowledge. Accordingly, this is a case where not only the power of attorney holder has signed and filed the complaint but claimed that the facts relating to the transactions of issuance of Cheque are true to his knowledge. The question whether those facts were actually within his knowledge or not is a pure question of facts and cannot be gone into at this stage.

7) In view of above, I do not find any merits in this application and accordingly the same stands dismissed.

8) However, the points raised shall remain open and the petitioners shall have the liberty to raise the points during the course of trial in accordance with law.

9)Criminal Section is directed to supply the urgent Photostat certified copy of this order to theparty, if applied for.

***(Ashim Kumar Roy, J.)***