

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).8219-8220/2007
(From the judgment and order dated 05/10/2007 in MCC No.1763/2007 and MCC
No.1760/2007 of The HIGH COURT OF M.P AT INDORE)

G.L.PUROHIT

Petitioner(s)

VERSUS

ISHAQ ALI ROSHAN

Respondent(s)

(With appln(s) for stay)
[FOR FINAL DISPOSAL]

WITH

SLP(Crl) NO. 7452 of 2008
(With office report)
[FOR FINAL DISPOSAL]

Date: 01/10/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI
HON'BLE MR. JUSTICE MADAN B. LOKUR

For Petitioner(s)

SLP(CRL) 8219-20/07 Mr. Santosh Kumar, Adv.
Mr. V. Sushant Gupta, Adv.
Mr. Mushtaq Ahmad, Adv.

SLP(CRL) 7452/08 Mr. Ranjith K.C., Adv. (N/P)

For Respondent(s)

SLP(CRL) 8219-20/07 Mr. K.K. Patra, Adv.
Ms. Bindu Saxena, Adv.
Mr. Shailendra Swarup, Adv.
Ms. Aparajita Swarup, Adv.

SLP(CRL) 7452/08 Mr. Amar Dave, Adv.

Mr. P.S. Sudheer, Adv.
Mr. Rishi Maheshwari, Adv.
Mr. Anshul Gupta, Adv.

Ms. Hemantika Wahi, Adv.
Ms. Parul Kumari, Adv.
Ms. Shubhada Deshpande, Adv

UPON hearing counsel the Court made the following

O R D E R

SLP(CRL) NO.7452 OF 2008

Admittedly, the issue involved in this special leave petition is whether the power of attorney holder can file a criminal complaint under Section 138 of the Negotiable Instruments Act, 1881. A three judge bench of this Court in A.C. Narayanan vs. State of Maharashtra & Anr. [Criminal Appeal No.73 of 2007], presided over by Hon'ble the Chief Justice P. Sathasivam, by judgment dated 13th September, 2013, has decided

the issue and held as under:

"26) While holding that there is no serious conflict between the decisions in MMTC (supra) and Janki Vashdeo Bhojwani (supra), we clarify the position and answer 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 or 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."

In view of this authoritative pronouncement of this Court, nothing survives in this special leave petition. The stay order passed by this Court on 24th October, 2008 is vacated. The trial Court shall proceed with the pending case in accordance with law. Needless to say that all other issues could be agitated in the trial Court. The special leave petition is disposed of in the above terms.

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(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 or 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."

In view of this authoritative pronouncement of this Court, nothing survives in these special leave petitions. The stay order passed by this Court on 21st January, 2008 stands vacated. The trial Court shall proceed with the pending case

in accordance with law. Needless to say that all other issues could be agitated in the trial Court. The special leave petitions are disposed of in the above terms.

| (VINOD LAKHINA)
| COURT MASTER

| | (INDU POKHRIYAL)
| | COURT MASTER

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