Non-Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2023
[Arising out of Special Leave Petition (Crl.) No.6220 OF 2019]

MITA INDIA PVT. LTD.....APPELLANT

versus

MAHENDRA JAIN.....RESPONDENT

J U D G M E N T

PANKAJ MITHAL, J.

1. Heard Mr. B.B. Sawhney, learned Senior counsel appearing for the appellant and Mr. Nitin S. Tambwekar, learned counsel appearing for the respondent and perused the pleadings exchanged between the parties.

2. Under challenge is the judgment and order dated 04.04.2019 passed by the learned Single Judge of the High Court in exercise of powers under Section 482 Cr.PC setting aside the orders of the trial court dated 30.01.2018 and 23.07.2018 and that of the Revisional Court dated 26.09.2018.

3. The appellant-company, M/s.Mita India Pvt. Ltd. awarded a contract to the respondent – Mahendra Jain for shifting of 33 K.V. electrical overhead line at its plant at Dewas. In connection with the said contract, the appellant-company by mistake made excess payment. The respondent agreed to refund the excess amount and issued two cheques to the appellant-company for its refund. The cheques were dishonoured on account of instructions "stop payment".

4. The appellant-company through its authorised representative Ripanjit Singh Kohli filed a complaint in the Court of Chief Judicial Magistrate, Dewas under Section 138 read with Section 141/142 of the Negotiable

Instruments Act, 1881. In the said complaint, respondent moved two applications – first alleging that the complaint has not been filed by an authorised person and the second alleging that Kavindersingh Anand cannot depose before the court as the complaint nowhere states that he is having knowledge about the facts and the transactions.

5. The first application was rejected by the trial court vide order dated 30.01.2018. The second application was rejected on 23.07.2018 whereupon a criminal revision was filed which was dismissed vide order dated 26.09.2018. These three orders were assailed by the respondent by invoking jurisdiction under Section 482 Cr.P.C. The High Court by the impugned order has allowed the petition filed under Section 482 Cr.P.C. and has ordered for setting aside the above orders on the ground that the complaint was not filed by the person authorised as Kavindersingh Anand, who was given the power of attorney, had no authority of law to sub-delegate the said power to the authorised representative Ripanjit Singh Kohli. Secondly, on the ground that Kavindersingh

Anand is not authorised to depose on behalf of the company.

6. In support, reliance has been placed upon a decision of this Court in [1]**A.C. Narayanan** v. **State of Maharashtra and Another**.

7. The Apex Court through the above decision has laid down the following principles: -

i) Filing of a complaint under Section 138 Negotiable Instruments Act, 1881 through power of attorney holder is perfectly legal provided he has due knowledge about the transaction (s) in question;

ii) Power of attorney holder can depose and verify on oath to prove the contents of the complaint if he has witnessed the transaction;

iii) The complaint filed through power of attorney holder must contain an assertion/ that he had the knowledge about transactions in question;

[1] (2014) 11 SCC 790

iv) Functions under general power of attorney cannot be delegated to another person without a specific clause permitting the same in the general power of attorney.

v) The affidavits of complainant, his witnesses or his power of attorney holder are permissible and sufficient for taking cognizance on the complaint; and

vi) The complaint by power of attorney holder on behalf of the original complainant is maintainable though he cannot file a complaint in his own name.

8. It is in the light of the above dictums of law laid down by this Court in the above case, it is to be examined if the complaint as filed is maintainable and the High Court is justified in exercise of its power under Section 482 Cr.PC to set aside the orders of the trial court and that of the Revisional Court holding that the complaint is maintainable as it has been filed by the authorised representative/power of attorney holder and that the said

power of attorney holder is legally entitled to depose in support of the complaint.

9. A bare perusal of the complaint filed by the appellant-company reveals that it has been filed in the name of the company through its authorised representative, Ripanjit Singh Kohli. Therefore, the complaint is by the appellant company in its own name. It has not been filed in the name of the power of attorney holder. The complainant, that is the appellant company is entitled to file the complaint in its own name through its power of attorney holder.

10. There is a general power of attorney of the appellant company in favour of one of its directors, Kavindersingh Anand. The said power of attorney was executed after it was duly approved by the board of directors in its meeting dated 01.05.2010. Therefore, one of the directors of the appellant-company, i.e. Kavindersingh Anand is holding power of attorney of the appellant-company and is the true and lawful attorney of the same.

11. The said power of attorney explicitly authorises him to appoint "counsel" or "special attorneys" for conducting all cases or otherwise to do all other acts and things for due prosecution or defence of legal or quasi legal proceedings anywhere in the world.

12. The aforesaid power of attorney Kavindersingh Anand, on the strength of the aforesaid power of attorney, authorised Ripanjit Singh Kohli to lodge the aforesaid complaint.

13. The law is settled that though the general power of attorney holder cannot delegate his powers to another person but the same can be delegated when there is a specific clause permitting sub-delegation. A careful reading of the general power of attorney would reveal that the appellant-company in its meeting of the board of directors held on 1st May, 2010 has resolved to appoint one of its directors Kavindersingh Anand as its attorney of the company who was specifically authorised vide paragraph 2 to appoint counsels or special attorney(s).

The language deployed, i.e., to appoint special attorneys is clear enough to indicate that the power of attorney holder has been authorised to appoint special attorneys in addition to the counsel for conducting cases and for doing other relevant and material acts in that connection. The use of the words "to appoint counsels or special attorneys" would not mean that he was authorised only to appoint counsel or special counsel for the purpose. The use of the word 'counsel' and 'special attorney' have different connotations. The use of the aforesaid words to appoint counsels or special attorneys in paragraph 2 of the power of attorney is quite distinct and refers to not only to appointment of counsel but of special attorneys other than the counsel. This is implicit upon the reading of paragraph 16 of the power of attorney which specifically deals with the appointment of solicitors, counsels, advocates, other consultants or professionals, but does not refer to attorneys. Therefore, a combined reading of paragraph 2 and paragraph 16 of the power of attorney would bring home the fact that the power of

attorney holder was authorised to appoint special attorney other than the counsel for the purposes for conducting and prosecution of cases on behalf of the appellant-company. This apart, the power of attorney holder was appointed under the resolution of the board of directors of the appellant company and the draft of the power of attorney was duly approved by the board. The said power of attorney as discussed above do provide for the sub-delegation of the functions of the general power of attorney holder and thus the filing of the complaint on behalf of the appellant company through its authorised representative Ripanjit Singh Kohli is not at all illegal or bad in law.

14. Now coming to the second aspect of the matter as to whether Kavindersingh Anand could depose on behalf of the appellant company, it has to be noted that he was one of the directors of the company who has been specifically authorised to lodge the complaint and to pursue it. It has come on record that he has filed his personal affidavit dated 26.03.2018 stating that he is general power of

attorney holder of the appellant company and that since he is also a director, he is fully conversant with the facts of the case and hence is competent to pursue the litigation on behalf of the appellant company. The High Court has very conveniently ignored the said affidavit and for the reason that as such an averment is not contained in the complaint, held that he was not authorised to depose on behalf of the appellant company.

15. We are of the considered opinion that the High Court manifestly erred in recording the above opinion when the affidavit of the power of attorney holder was on record containing that he has personal knowledge of the transactions.

16. In view of the above, as the power of attorney holder is said to be having due knowledge about the transactions, he has the capacity to depose and the trial court or the Revisional Court committed no error of law in rejecting the applications of the respondent.

17. Accordingly, we are of the opinion that that the High Court erred in interfering with the orders of the trial court in passing the impugned order dated 04.04.2019. Accordingly, the aforesaid order dated 04.04.2019 is hereby set aside and the those of the trial court and the revisional court are restored.

18. The appeal is allowed.

19. All the pending applications, if any, stand disposed of.

..... J.
[V. Ramasubramanian]

.....J.
[Pankaj Mithal]

New Delhi;
February 20, 2023.