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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 04.01.2012

+ CRL.L.P. 371/2011

GHISA RAM (DECEASED) THROUGH: SH. LAXMI  
NARAIN ..... Petitioner

Through: Mr.Sanjay Sharma, Advocate.

versus

SHAILENDER KUMAR SHARMA

..... Respondent

Through:

With

CRL.L.P. 372/2011

GHISA RAM DECD. THR. LAXMI NARAYAN

..... Petitioner

Through: Mr.Sanjay Sharma, Advocate.

versus

SAHILENDER KUMAR SHARMA

..... Respondent

Through:

With

CRL.L.P. 373/2011

GHISA RAM DECD. THR. LAXMI NARAIN ..... Petitioner

Through: Mr.Sanjay Sharma, Advocate.

versus

SHAILENDER KUMAR SHARMA

..... Respondent  
Through:

And

CRL.L.P. 374/2011  
GHISA RAM DECD. THR. LAXMI NARAIN  
..... Petitioner  
Through: Mr.Sanjay Sharma, Advocate.

versus

SHAILENDER KUMAR SHARMA  
..... Respondent  
Through:

**CORAM:  
HON'BLE MR. JUSTICE M.L. MEHTA**

**M.L. MEHTA, J. (Oral)**

**+Crl.M.As. 10628/2011, 10722/2011, 10723/2011 & 10641/2011 (for restoration)**

Heard, in view of the reasons mentioned in the applications, the applications are allowed and the leave petitions are restored to their original numbers.

Applications stand disposed of.

**Crl.L.Ps. 371-374/2011**

1. These four leave petitions arise out of the separate judgments dated 18<sup>th</sup> May, 2011 of the learned M.M. passed in four complaints being CC Nos. 113/2011, 110/2011, 112/2011 & 111/2011 under Section 138, Negotiable Instruments Act (hereinafter referred to as

‘Act’). These petitions have been filed on behalf of Ghisa Ram (deceased) through attorney Laxmi Narain against the impugned judgments whereby the accused/respondent Shailender Kumar Sharma was acquitted by the learned M.M. in all the four complaints under Section 138 of the Act.

2. The aforesaid complaints were filed by Ghisa Ram and Laxmi Narain as complainants No. 1 and 2. The material facts as gathered from the record are that the complainant No. 1 in the complaint namely Ghisa Ram had filed a civil suit against the accused/respondent as well as one Om Prakash for possession, injunction and recovery of damages. During the pendency of the said suit, complainant No. 1 Ghisa Ram executed a General Power of Attorney dated 3.7.2003 in favour of the complainant No. 2 Laxmi Narain thereby authorizing him to file and obtain the possession as well as the damages from the opposite parties. The said suit came to be decreed vide order dated 12.8.2005 against accused Shailender Kumar Sharma, who was held liable to pay to the complainant Ghisa Ram a sum of Rs. 5,06,600/- along with damages, interest and cost. Thereafter, the complainant No. 2 Laxmi Narain acting as attorney of complainant No. 1 Ghisa Ram filed an execution petition of the decree dated 12.8.2005. In execution of the said decree, the goods of accused were seized from his shop No. 24, Babu Market, Sarojini Nagar, New Delhi. On the request made by the accused, complainant No. 2 agreed to accept a sum of Rs. 3.50 lakhs towards full and final satisfaction of the decretal amount. Consequently, accused/respondent paid a sum of Rs. 50,000/- in cash and issued four cheques of Rs. 75000/- each in favour of the

complainant No. 2, which on presentation, got dishonoured on account of 'Payment Stopped by Drawer'. Since the respondent/accused failed to make payment after the statutory demand notice, the aforesaid four complaints were filed under Section 138 of the Act. The plea taken by the respondent/accused was that the blank cheques were obtained under coercion and that subsequently, the name of the complainant No.2 Laxmi Narain was filled. It was also his plea that a notice was issued to Laxmi Narain not to present the said cheques.

3. The Trial Court found the following facts to be not disputed between the parties:

(1) *That there was a decree dated 12.8.2005 in favour of complainant No.1 i.e. Ghisa Ram and against accused for possession and recovery of amount of Rs.5,06,600/-.*

(2) *That the cheque in question bears the signatures of accused and it was issued towards satisfaction of decretal amount.*

(3) *That the cheque is in favour of Laxmi Narain i.e. complainant no.2 and not in favour of complainant no.1 (though as per accused, complainant no.2 dishonestly inserted his name as a payee).*

(4) *That the cheque in question got dishonoured for the reason "Stop Payment Instruction" by the accused.*

(5) *That the accused received demand notice from complainant no.2.*

(6) *No payment was made by accused within stipulated time after receipt of demand notice.*

4. Having noted the undisputed facts as above, the Trial Court recorded that only question that was to be decided was whether there was a legally enforceable debt/liability in favour of the complainant No. 2 Laxmi Narain and against the accused.

5. It was argued there that the respondent/accused had no legally enforceable debt/liability towards the complainant No. 2 Laxmi Narain

against the cheques in question as the latter had dishonestly entered his name as payee on the cheques and that liability, if any, of respondent/accused was towards complainant No. 1 i.e. Ghisa Ram. It was also argued by the counsel for the respondent/accused that the complainant No. 2 Laxmi Narain could not be said to be “holder” of the cheque so as to raise presumption of legally enforceable debt against him under Section 139 of the Act. It was also argued that in any case, the liability has ceased to exist subsequent to the order dated 23.8.2008 of Appellate Court whereby the decree in favour of the complainant No. 1 Ghisa Ram has been set aside and matter has been remanded back to Trial Court.

6. On the other hand, submissions of learned counsel for the complainants were that on the date of issue of cheques, the decree dated 12.8.2005 was in force and therefore, subsequent setting aside of same would not help the case of the respondent/accused. It was also submitted that since Laxmi narain, complainant No. 2 was attorney of Ghisa Ram, complainant No.1, therefore, it cannot be said that there was no legally enforceable debt or liability of the respondent/accused towards Laxmi Narain, complainant No. 2.

7. The learned Trial Court held that under Section 139 of the Act, the presumption was available in favour of the “holder” of the cheques and since complainant No. 2 Laxmi Narain was not a “holder” within the ambit of the Section 8 of the Act, the presumption that the cheques were given to him in discharge of debt/liability was not available to him under Section 139 of the Act. The complainant Laxmi Narain was also held to be not ‘holder’ of the cheques in his own name inasmuch

as firstly because, the authenticity of the copy of General Power of Attorney in his favour was not proved and secondly because, in any case, he was nowhere authorized or entitled to the possession of the cheques in his name towards satisfaction of the decretal amount and to recover or receive the amount in his own name. There being no evidence led by him to prove the Power of Attorney or to show that he was authorized to the possession of the cheques in his own name or entitled to have or receive in his own name and even there being no evidence of complainant No. 1 Ghisa Ram in this regard, he could not be said to be in possession of the cheques as a holder of the cheques or that the cheques were given to him towards the legally enforceable debt or liability. On all these grounds, the complaints were dismissed and the respondent/accused was acquitted in all the four cases.

8. The impugned judgment has been assailed on the same ground as were taken by the complainant before the Trial Court. Admittedly, the civil suit against the respondent was filed by Ghisa Ram, complainant No. 1 alone and the decree was also passed in his name. It was only at the time of execution of the decree that Power of Attorney was purported to be executed by him in favour of the complainant No. 2 Laxmi Narain. The original of the said Power of Attorney was never produced before the Trial Court.

9. Section 8 of the Negotiable Instruments Act defines the "holder" as under:

*'8. " Holder". The " holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction'.*

10. In the case of ***Gemini versus Chandran***, Crl. A. No. 282 of 1999 decided on 14.7.2006, Kerala High Court interpreted Section 8 of Negotiable Instruments Act as follows:

*“23. I shall first consider who a "holder" of the cheque is. The definition reveals, he is not a person who merely "holds" or "carries" the cheque, as it may apparently appear. The 'holder' is not the person who is in mere possession of the cheque. He is not the one who merely "produces" the cheque in court from his custody. He is not even the person who is only named in the cheque. A "holder" of the cheque has a definite meaning under the Act. Section 8 provides that a "holder" of the cheque is the person who is `ENTITLED' in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. (Where the cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction).*

*24. The bedrock of the definition of holder is "entitlement". Such entitlement is i) to the possession of the cheque and ii) to receive and recover the amount due thereon from the parties to the cheque. Strictly speaking, even the actual possession of the cheque may not be decisive under section 8. Even if a person is in possession of the cheque, if he does not have the entitlement as stated in the section, such person cannot be said to be a "holder". So also, even if a person is not in actual possession of the cheque, if he is `entitled' to be in possession of the cheque, he can still be brought under the definition of the "holder". It is not even the physical possession of the cheque, but the `ENTITLEMENT' to be in possession of the cheque which is relevant.*

*25. ....*

*26. It is also relevant to note that the "holder's" entitlement to possession of the cheque and to the recovery or receipt of the amount etc., must be "IN HIS OWN NAME". That means, even if a person has certain right to possess the cheque and to receive or recover the amount etc., such mere right may not suffice to bring him within the sweep of section 8 of the Act, unless such entitlement is "in his own name" and not in any other person's*

*name. That means any and every entitlement is not enough, but it must be entitlement in his own name”.*

11. The presumption regarding the cheques having been given in discharge of any debt or other liability under Section 139 of the Act was not to be available to the complainant Laxmi Narain inasmuch as such a presumption was only available to the holder of a cheque. Since he was not the holder of the cheque as discussed above, such a presumption was not available to him. Even otherwise, he was not entitled to have or receive cheques in his own name since the decree was in favour of complainant No. 1 Ghisa Ram and he was never authorized by the aforesaid Power of Attorney or otherwise to receive the possession of the cheques in his name from the accused. In any case, the decree holder Ghisa Ram nowhere authorized the complainant No. 2 Laxmi Narain to receive the cheques or recover the amounts in his name. In the given facts and circumstances, Laxmi Narain could only be said to be a carrier or possessor of cheques in trust of Ghisa Ram. He was not entitled to receive, have or possess the cheques in his own name and to recover the amounts due to Ghisa Ram from the accused. It was not the case of the complainant Laxmi Narain that the cheques were given to him towards any legally enforceable debt or liability due to him from the accused. It was also not the case of the complainant Laxmi Narain that the actionable claim of recovery against the accused was transferred in his name by Ghisa Ram.

12. The other pertinent aspect of the case which demolishes the present petitions is that these have been filed by Laxmi Narain as attorney of the deceased Ghisa Ram. With the death of the Ghisa Ram,

the attorney, if any, executed by him in favour of Laxmi Narain would come to an end being *non est* and non-enforceable and on this ground also, the petitions are not maintainable.

13. In view of my above discussion, I do not see any infirmity or illegality in the impugned judgments of learned M.M. The leave petitions merit dismissal and are accordingly dismissed in limini.

**M.L. MEHTA,J**

**JANUARY 04, 2012**

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