

to defend the Country, to safeguard public property, to abjure violence to promote brotherhood and dignity of women, to develop a scientific temper and to strive for excellence. The object is to make every citizen realise that he has certain duties towards society. The correlative right is in the society. The inspiration for the part dealings with fundamental duties is the Constitution of USSR. The Soviet Constitution requires its citizens 'to respect the Constitution, observe the law, maintain labour discipline and honesty in the performance of public duties and to respect the rules of the socialist community.'

The duties and the liabilities are to be distributed in such a way as to minimise inequalities.

Part-III of the Constitution dealing with Fundamental Right is a great chapter of liberty. It has made our Constitution sublime by guaranteeing against State interference, certain rights vital to the freedom and well-being of the people. At the same time, it must be pointed out that all the Fundamental Rights guaranteed are subject to reasonable restrictions. In fact, there is a general criticism that 'under

Part-III of the Constitution, the fundamental rights are riddled with so many exceptions that the exceptions have eaten up right altogether.'

To avoid abuse of rights and liberties, to establish a socialistic pattern of society and to preserve the integrity and sovereignty of the Nation, such restrictions are not only desirable, but also necessary.

Foot Notes:

1. *Holy Grail* :—The holy vessel containing the last drops of christ's blood brought to England by *Joseph of Armathea* and being afterwards, lost eagerly sought for by king *Arthur's Kings*.
2. *Nice Machean Ethics V (Trams Rackh)*.
3. *Homore* 'Social Justice' in Legal Philosophy, (ed summers). 61 at 68-69.
4. *Nicomacheam Ethics v.2*.
5. *Caln the dense of Justice* (1949).
6. *Reoberts v. Hopwood* (1925) AC 578.

EXTENT OF AGENT'S AUTHORITY UNDER THE INDIAN CONTRACT ACT SECTION 188

By

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The extent of Agent's authority under Section 188 has an vital impact on contractual obligations under the Indian Contract Act. An agent having an authority to carry on business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting

such business, implied authority decided on circumstances of each case, *Shah Moham v. Ahmed Ali*, AIR 1935 Oudh 170 (173). If a case falls within the section, the third person can hold the principal liable on the Act or contract itself, because by the term of the section the agent's authority to bind the

principal is recognised in cases when ever the agent does anything which is justified by provisions of this section. If, by any wrongful or unauthorised act of an agent, the money or property of a third person comes into the hands of the principal, or is applied or utilised for his benefit, the principle is liable jointly and severally with the agent to restore the amount or the value of such money or property, *Paboodan v. Miller*, AIR 1938 Mad. 966.

The authority conferred by the section to do things necessary for a business may be excluded either expressly or implied by the terms of agency for *eg.*, A manager of a cinema appointed to exhibit a film has the power to enter into contract with the producers of the films, *George Pictures v. Neelkandara Gopalkrishnar*, (1971)A Ker.274.

Authority in favour of Attorney: The Nagpur High Court in *Ram Deo Trilokchand Agarwal v. Lalunatha*, AIR 1937 Nag.65 has quoted the definition of power of attorneys from *Stroud's* Judicial dictionary as "An authority whereby one is in the terms, stead or place or another to act for him". A document may be presented for registration by a person duly authorised by power of attorney executed and authenticated in the manner provided in Section 33 of Registration Act. If power is given by a company to a person to institute suits or other legal proceedings, that power will include power to file appeals and revisions. Holder of general power of attorney is competent witness, having regard to Section 118 of the Evidence Act 1872, *Parikh Amritlal Ramanlal Trustee v. Rami Mafatlal Ghirdharilal*, (1982) 23 Guj.LR.337. No presumption about execution of a power of Attorney can be raised under the Section 85 of the Evidence Act, if it does not state that it was executed before an authenticated by the Notary Public, *M/s. Electric const. Equipment Co. Ltd. v. M/s. Jagit Electric*

works, Sirsa, AIR 1984 Delhi 363. It was held by Madras High Court, *Goverdhan Das Jamunadas v. Friedmans Diamond Trading Co. Ltd.*, AIR 1939 Mad 549 that authority to sue of demand moneys, institute legal proceedings and settle claims does not include power to assign decrees.

A legal practitioner cannot compromise a suit on behalf of his client without express authority, *Mehra v. Ahmed*, AIR 1929 Ldh 741(1).

The statement of the holder of attorney is admissible in criminal proceedings in which the principal is accused, *K.R. Dalmia v. Delhi Administration*, AIR 1962 SC 1821. There is no bar under law for an agent holding joint power of attorney on behalf of several principals. As such three principals can jointly appoint one agent, *Syed Abdul Khader v. Rami Reddy*, AIR 1979 SC 553.

Authority of Broker: A broker authorised to sell goods has implied authority to sell on reasonable credit, to receive payment of price if he does not disclose his principal. He has no implied authority to cancel, or vary, or substitute contracts made by him, has no implied power to delegate his authority even if acting under a *del credere Commission*, *Hen Derso v. Burnewell*, (1872) 30 RR 799.

The broker in law has no authority indeed to substitute a contract brought through by him, *Lalchand Dhoramchand v. Alliance Jute Mills Co. Ltd.*, AIR 1973 Cal. 243 at 276. Authority given to an agent to negotiate a scale and find a purchaser, without furnishing him with all terms, means only to find a man willing to become a purchaser and not find him and make him a purchaser, *John v. V. Chandy Philip*, AIR 1988 Ker. 122.

Authority to realise Debts: A general Attorney to recover debts implies an

authority to recover decree debts also, *Srinivas v. Triumalai*, 23 IC 99, AIR 1914 Mad. 632. An agent has authority to make admissions in civil proceedings if he is expressly or impliedly authorised to make them, *Govendju v. Chotalal*, 2 Bom LR 651. But the fact of agency must be proved before the statements made by him can be admitted in evidence. An authority to receive rents does not include as authority to distrain for rents, *Ward v. Shaw*, (1833) 35 RR 640. It is to be borne in mind that an agent cannot make an unusual compromise or settlement so as to impose on the principal new liabilities or to deprive him of his rights against the debtor. Agent does not have incidental authority to realise or compromise debts, *Peoples First National Bank & Tri. Co., v. Gau Delli*, 110 A 2d 900.

Authority of legal practitioner: The implied authority can always be countermanded by the express directions of the client, *Sourindranath Mitra v. Tarubala Dosi*, AIR 1930 PC 158. In India it has been held that the general authority of a Counsel whether Barrister or Advocate is restricted to compromises in Court, *Askaran Choutmal v. E.I. Railway*, AIR 1925 Cal. 696. Counsel is clothed by his retainer with complete authority over the suit, the mode of conducting, it and all that is incident to it, and this is understood by the opposite party, *Nundolal v. Vistarini*, (1900) 27 Cal. 428.

Third Party's & Limitation of Agent's authority:

It is only when the contract as such cannot be enforced against the principal that the third person has to fall back on the equitable role founded on the theory of unjust enrichment. In the case of dormant partners no limitation of authority will avail as between sleeping partner and active partner, as to things within the ordinary authority of partners, *Watteau v. Fenwick*, (1893) 1 QB

346. Any limitation on the authority of an agent does not bind a third party unless he is or is made aware of such limitation, *Union of India v. Motilal*, (1962) AP 384. If by any wrongful or unauthorised act of an agent, the money or property of a third person comes into the hands of the principal or is applied for his benefit, the principal is liable jointly and severally with the agent to restore the amount or the value of such money or property, *Paboodan v. Miller*, AIR 1938 M 966.

Authority of Partner: A purchase by a partner was on his own account and not on behalf of partnership - it cannot be contended the transaction must necessarily be deemed to be that of the partnership because it was of a kind which the partnership used to enter into, *Damoder Das Khivraj v. Gourishankar Harbados*, AIR 1958 Bom. 445. A promissory note was executed by one person was partner of a firm but was not signed on behalf of firm. Held it was not justifiable to claim against the other parties of the firm, *Simanchal Mahapatro v. Buddhiram Padhi*, AIR 1976 Orissa 113.

Likewise an agent of a corporation or an incorporated company cannot have any authority, express or implied to do any act on behalf of the corporation or company which is *ultra vires*, *Sutlej Cotton Mills Ltd. v. Dr. Ranjit Singh*, AIR 1952 Punj 263.

Section 188, Contract Act, 1872, provides that where an agent is authorised to do an act, he has authority to do every lawful thing which is necessary for the doing of that Act. The agent in doing that act must neither do any thing which is illegal, nor beyond the limits of his own authority, nor beyond the powers of his principal. In other words, the principal normally cannot be made liable for the unauthorised criminal acts of the agent, or for other acts done by him in excess of his authority,

Travancore Dewaswom Board v. Moothathu, 56 Cr.L.J. 845. If agent acts in excess of authority or fraudulently, principal is bound, *Bisserssardas v. Kabulchand*, AIR 1945 Nag.121 provided the evidence shows the

contracting party has been led into an honest belief in the existence of the authority to the extent apparent to him, *Re Ahmednagar Education Society, Ahmednagar*, 1980 Mah LJ 126.

**NOTE ON COMPETENCY OF SPECIAL COURT CONSTITUTED
UNDER SCHEDULED CASTES AND SCHEDULED TRIBES
(PREVENTION OF ATROCITIES) ACT, 1989 TO TRY THE OFFENCES
UNDER T.P.C. ALONG WITH OFFENCES UNDER THE ACT**

By

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The Division Bench of the Hon'ble High Court of Andhra Pradesh, on reference made by Presiding Officer Special Court under the SC & ST Act at Warangal, to the High Court, and after the matter was referred to it by the Hon'ble Justice Sri *A. Hanumanthu*, gave authoritative pronouncement on certain points viz., about the competency of Spl. Court to try the offences under the Act and also offences of IPC with which the accused may be charged when committed in the same transaction.

Although the Hon'ble Justice Sri *A. Hanumanthu*, evolved certain questions (4) for authoritative pronouncement, by the Hon'ble Division Bench, the Division Bench also formulated another important question and added to the referred questions before scanning the subject. Infact the said additional question is very important question that whether the Spl. Court can try the offences of IPC along with offences under the Act, which the accused committed in the same transaction. The Hon'ble High Court at para 44 of its judgment on the aforesaid reference, which is reported in 1999 (3) ALD 544 held that Special Court gets jurisdiction to try such inter related offences with the offences under the Act, approving the view of Kerala High Court, but it is

clarified that trial can only take place in such an event after committal by the Magistrate. However it was observed in the said judgment that there is lacunae in the Central Act 33 about the other offences arising under IPC inter related with the offences under the Act unlike in other enactments viz., Essential Commodities Act etc.

As far as the procedure to be followed by the Special Court for trial of Offences under the Act and other offences, it is now held that Section 193 Cr.PC requires to be followed by adopting the view of the Supreme Court, held in *Mohd. Safi v. State of West Bengal*, AIR 1966 SC 69, but at the same time it seems, the Hon'ble High Court lost sight of another important impediment envisaged in Section 194 Cr.PC for the Additional Session's Judges whose Courts are notified as Special Courts in our State. The Additional Session's Courts are having jurisdiction to try the offences of cases which are made over to it by General or Special Order of the Session's Judge or as High Court may by Special Order direct him to try. Therefore the Additional Session's Judge who is presiding over the Court of Session's which is constituted under Section 14 of the Act as Special Court, is not competent either