IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 22 OF 2013

UCO Bank, a body corporate constituted
under the Banking Companies
(Acquisition and Transfer of Undertaking)
Act, 1970, having its head office at
10, B.T.M. Sarani, Calcutta – 700 001,
Having its branch office at Margao,
Represented herein through its
Branch Manager, Shri Ramakrishna
Naik K., S/o K. Guruva Naik,
age 49 years, New Market,
Margao – Goa. ... Appellant

Versus

1. Smt. Sulbha Mangesh Naik,
w/o Mangesh Naik,
major in age,
r/o Arshad Complex,
1st building, Ground floor,
Madel, Margao – Goa.

2. State of Goa,
Through Public Prosecutor,
Panaji, Goa. ... Respondents

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Shri U.V. Timble with Ms. Yadika Mandrekar, Advocates for the Appellant.

Shri Ashwin D. Bhobe, Advocate for the Respondent No. 1.

CORAM:- C. V. BHADANG, J.

DATE:- 8th APRIL, 2015

ORAL JUDGMENT:

Heard Shri Timble, learned Counsel for the appellant-Bank and Shri Bhobe, learned Counsel for the respondent no. 1.

2. The original complainant is before this Court challenging the judgment and order dated 11.11.2011, by the learned Judicial Magistrate First Class, Margao in Criminal Case No. 83/NI/2007/F. By impugned order, the learned Magistrate has dismissed the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act (N.I. Act, for short), on the ground that the complaint was not filed by a duly authorised representative.

3. The brief facts are that the appellant is a Banking Company. The appellant had advanced a loan to the respondent no. 1 and towards repayment of the outstanding dues, the

respondent no. 1 issued a cheque, which was dishonoured on account of insufficient funds. The appellant therefore, filed a complaint under Section 138 of the N.I. Act before the learned Magistrate. It appears that the complaint was signed by one Ramakrishna Naik, who was the then Branch Manager of the Bank at Margao branch. The appellant also produced a Power of Attorney in favour of Shri Ramakrishna Naik at the time of verification of the complaint. It appears that the learned Magistrate recorded verification of Shri Ramakrishna Naik and issued process against the respondent. At the trial, one Shri M.D. Ravi being the then Branch Manager was examined as prosecution witness and yet another Power of Attorney in favour of Shri M.D. Ravi, was produced at Exhibit-51. The respondent no. 1 came with various defences, however, the learned Magistrate found that the complaint can be disposed of on a preliminary issue. The learned Magistrate held that the complaint was not filed by a duly authorised representative of the appellant. After hearing the parties, the learned Magistrate came to the conclusion that, Power of Attorney in favour of Shri Ramakrishna Naik has not been formally referred to in the evidence.

4. It is submitted by Shri Timble, learned Counsel for the appellant that the learned Magistrate was in error in holding that the complaint was not filed by a authorised representative. The learned Counsel has taken me through the contents of the Power of Attorney in favour of Shri Ramakrishna Naik, as also Shri M.D. Ravi, in order to submit that, clause 12(c) indeed authorises the Power of Attorney holder to file a complaint and act on behalf of the Bank. He submitted that merely because the Power of Attorney in favour of Shri Ramakrishna Naik, was not formally referred to in evidence, it cannot be said that the complaint was not filed by the authorised representative. The learned Counsel submitted that by the time, the complaint came up for hearing, Shri Ramakrishna Naik was transferred and his successor, Shri M.D. Ravi was examined before the learned Magistrate. He submitted that the learned Magistrate has proceeded on a hyper technical view in dismissing the complaint.

5. Shri Bhobe, learned Counsel for the respondent no. 1 submitted that the complaint has to be filed by a payee or the holder in due course, as required under Section 142 of the N.I.

Act. It is submitted that the learned trial Court after considering the provisions of Section 142 of the N.I. Act and taking a survey of the decisions, has come to the conclusion that the complaint was not filed by the authorised representative of the Bank. He therefore submitted that no exception can be taken to the impugned judgment and order.

6. On hearing the learned Counsel for the parties and on perusal of the impugned judgment, I find that the same cannot be sustained. There cannot be any manner of doubt that as per Section 142 of the N.I. Act, the complaint can be filed by the payee or holder in due course, which in the present case is the appellant-Bank. The question is whether the complaint can be said to be filed by an officer, who is authorised representative of the Bank or not. It is undisputed that the Power of Attorney in favour of Shri Ramakrishna Naik, was produced before the learned Magistrate at the stage of recording verification at Exhibit 15/C. It further appears that subsequently on account of transfer of Shri Ramakrishna Naik, the Bank had examined his successor, Shri M.D. Ravi, who also had similar Power of Attorney

in his favour and that Power of Attorney is at Exhibit-51. Perusal of the same shows that the terms and conditions are identical. The clause no. 12(c), which is relevant for the purpose is as under:

> *"12. GENRALLY to do all acts, deeds and things not herein specifically mentioned but which are necessary, requisite or expedient to carry on and manage the business of the Bank and which are necessary, requisite or expedient for the better and more effectually doing and performing the several acts, deeds and things aforesaid or incidental thereto.*
>
> *PROVIDED HOWEVER that the said attorney shall be entitled to do and transact alone and singly and without joining any other attorney or officer the following acts or any them viz:*
>
> *a) ….*
>
> *b) ….*
>
> *c) To decide, initiate, commence, prosecute, continue and defend all actions, suits or legal proceedings whether civil, criminal or revenue, including proceedings to procure or establish the bankruptcy or insolvency of any person or firm or liquidation*

> *or winding up of any companies, to compromise or refer to arbitration any claims or disputes in such actions, suits or proceedings or otherwise, to appoint solicitors, Advocates, Pleaders, Vakils and other legal agents; to make, sign, verify, execute plaints, petitions, written statements, tabular statements, Vakalatnamas, Warrants or Attorney or any other papers expedient or necessary in the opinion of the said attorney to be made, signed, executed, verified, presented or filed in any court, tribunal, body or authority or anywhere as may be required."*

7. It can thus be seen that the holder of the Power of Attorney had the authority to initiate, commence, prosecute and continue the same. Thus, holder of the Power of Attorney had authority to initiate the proceedings on behalf of the Bank. Merely because the Power of Attorney in favour of Shri Ramakrishna Naik is not formally referred to in the evidence would not be material. It is trite that the Power of Attorney in favour of Shri Ramakrishna Naik was exhibited when the verification was recorded. The fact that the Power of Attorney was not again exhibited during the course of evidence would not be material.

8. In such circumstances, the finding recorded by the learned Magistrate cannot be sustained.

9. In the result, the appeal is allowed. The impugned judgment dated 11.11.2011 passed by the learned Judicial Magistrate First Class, Margao, in Criminal Case No. 83/NI/2007/F is hereby quashed and set aside. The complaint case is restored to the file at its original number, for disposal in accordance with law. The parties to appear before the learned Magistrate on 30.04.2015.

In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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