

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY ,THE 28TH DAY OF JULY 2015 / 6TH SRAVANA, 1937

CRL.A.No. 974 of 2014 IN Cr1.L.P.. 315/2014

AGAINST THE JUDGMENT IN CC 1/2014 of JUDICIAL MAGISTRATE OF FIRST
CLASS -III, MAVELIKKARA DATED 19-08-2014

AGAINST THE ORDER/JUDGMENT IN OTHERS 315/2014 of HIGH COURT OF
KERALA DATED 18-09-2014

PETITIONER/COMPLAINANT:

P.G. JOSHUA
AGED 59 YEARS
S/O.DANIEL JOHN,
PUTHEN PEEDIKAYIL HOUSE,
IRANIKUDY P.O., NOORANADU,
MAVELIKKARA.

BY ADV. SRI.B.RENJITHKUMAR

RESPONDENTS/ACCUSED& STATE:

1 K.C. CHACKO
AGED 47 YEARS
RESIDING AT KALLUPURATHU PADINJATTATHIL,
THUMPAMON, ADOOR - 691 523.

2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 31.

R1 BY ADV. SRI.MVS.NAMBOOTHIRY
R2 BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28.07.2015,
ALONG WITH CRL.A.975/2014, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY ,THE 28TH DAY OF JULY 2015 / 6TH SRAVANA, 1937

CRL.A.No. 975 of 2014 IN Cr1.L.P.. 316/2014

AGAINST THE ORDER/JUDGMENT IN CC 2/2014 of JUDICIAL MAGISTRATE
OF FIRST CLASS -III, MAVELIKKARA DATED 19-08-2014

AGAINST THE ORDER/JUDGMENT IN OTHERS 316/2014 of HIGH COURT OF
KERALA DATED 18-09-2014

PETITIONER/COMPLAINANT:

P.G.JOSHUA, AGED 59 YEARS,
S/O.DANIEL JOHN,
PUTHEN PEEDIKAYIL HOUSE,
IRANIKUDY P.O., NOORANADU,
MAVELIKKARA.

BY ADV. SRI.B.RENJITHKUMAR

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HIGH COURT OF KERALA, ERNAKULAM - 31

R1 BY ADV. SRI.MVS.NAMBOOTHIRY
R2 BY PUBLIC PROSECUTOR P. MAYA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28.07.2015,
ALONG WITH CRL.A.974/2014, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

JUDGMENT

[CRL.A 974/2014 ,CRL.A.975/2014]

The former appeal has been preferred against the judgment dated 9.8.2014 passed by the Court of the Judicial First Class Magistrate-III, Mavelikkara in C.C.No.1/2014 and the latter appeal has been preferred against the judgment of the same court passed on the same date in C.C.No.2/2014. The parties in both these appeals are one and the same and that apart, there is commonness of issues involved in these matters. In the said circumstances and on request of the parties these appeals are taken up for joint hearing and disposal.

2. The appellant was the complainant in both the aforementioned calendar cases. The common respondent in these appeals was the accused in both the said cases and he faced prosecution for the offence punishable under Section 138 of the N I Act in those cases and the captioned appeals have been preferred by the complainant therein on being aggrieved by the orders of acquittal passed by the trial court in those Calendar

Cases. For the sake of convenience the parties are referred to hereinafter in this judgment in accordance with their status in these appeals. The appellant filed private complaints pursuant to the dishonour of cheques bearing Nos.446740 and 446741 after complying with the statutory formalities within the statutorily prescribed period. The case in respect of dishonour of cheque bearing No.446740 was ultimately taken on file and registered as C.C.No.2/2014 and in respect of cheque No.446741 taken on file and registered as C.C.No.1/2014. Both the cheques were drawn on Lord Krishna Bank, Pandalam Branch. In the circumstances, it is only apposite to refer to the facts separately.

Crl.A.No.974/2014

3. The case of the appellant was that the first respondent accused borrowed an amount of ₹9,00,000/- (rupees nine lakhs) promising to return the same on demand with 15% interest per annum. For discharging the said debt the first respondent issued three cheques viz., 446740, 446741 and 446742 drawn on Lord Krishna Bank, Pandalam Branch. When cheque bearing No.446741 for an amount of ₹3,00,000/- dated 2.4.2007 was presented for encashment it was dishonoured on the ground 'account closed". Thereupon, he issued Ext.P5 lawyer notice, pursuant to the receipt of Exts.P2 and P3 dishonour

memos, intimating the first respondent regarding the dishonour of Ext.P1 cheque bearing No.446741 dated 02.04.2007 calling upon him to pay the amount due. The notice was accepted by the accused-first respondent on 10.4.2007. However, he has failed to pay the amount due within the statutorily prescribed period. It was raising such allegations that the appellant filed a private complaint alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the N.I. Act') against the first respondent. It was originally taken on file of the court of Judicial First Class Magistrate-1, Mavelikara as S.T.No.629/2007. Thereafter, the case was made over to the court of the Judicial First Class Magistrate-II, Mavelikara and refiled as C.C.No.1/2014. On due process the first respondent appeared before the court and the particulars of the offence under Section 138, N.I.Act were read over and explained to him and he pleaded not guilty. To prove the case the appellant got himself examined as PW1 and got marked Exts.P1 to P6. After the closure of the evidence of the appellant-complainant, the first respondent-accused was examined under section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances put to him. Apart from getting marked Exts.D1, D1(a) and D1(b) through PW1 the first respondent did not adduce

any evidence in defence. After considering the evidence on record the learned Magistrate found that the complainant had failed to prove that Ext.P1 cheque was issued for discharging the legally enforceable debt due to the complainant and the complainant-appellant had failed to prove the case against the accused beyond doubt and that the accused-first respondent is entitled to the benefit of doubt. Consequently, the accused-first respondent was acquitted under section 255(1), Cr.P.C.

Crl.A.No. 975/2014

4. The appellant-complainant filed a private complaint alleging commission of offence under section 138, N.I.Act against the first respondent-accused alleging as hereunder:-

In fact, the complaint was filed pursuant to the dishonour of cheque No.446740 drawn on Lord Krishna Bank allegedly issued for discharging the debt of Rs.9 lakhs. The allegation is that the accused borrowed an amount of ₹9,00,000/- from him promising to repay the amount on demand with 15% interest per annum. In discharge of the said debt the first respondent issued three cheques bearing Nos. 446740, 446741 and 446742 and when cheque No.446740 for an amount of ₹3,00,000/- dated 2.5.2007 was drawn on Lord Krishna Bank, Pandalam Branch was presented

for encashment it was dishonoured on the ground 'account closed'. Thereupon, he issued Ext.P6 lawyer notice, pursuant to the receipt of Exts.P2 and P3 dishonour memos, intimating the first respondent regarding the dishonour of Ext.P1 cheque bearing No.446740 dated 02.05.2007 calling upon him to pay the amount due. The notice was accepted by the accused-first respondent on 14.5.2007. However, he has failed to pay the amount due within the statutory prescribed period.

5. On due process the first respondent appeared before the court and the particulars of the offence were read over and explained to him and he pleaded not guilty. To prove the case the appellant got himself examined as PW1 and got marked Exts.P1 to P7. After the closure of the evidence of the appellant-complainant the first respondent-accused was examined under section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances put to him. The first respondent did not adduce any evidence in defence. After considering the evidence on record the learned Magistrate found that the complainant had failed to prove that Ext.P1 cheque was issued for discharging the legally enforceable debt due to the complainant and the complainant-appellant had failed to prove the case against the accused beyond doubt and that the accused-first respondent is

entitled to the benefit of doubt. Consequently, the accused-first respondent was acquitted under section 255(1), Cr.P.C.

6. I have heard the learned counsel for the appellant and the learned counsel for the first respondent, in both these appeals as also the learned Public Prosecutor.

7. Essentially, common contentions have been raised in both these cases. The learned counsel for the appellant contended that the learned Magistrate arrived at the findings that the appellant had failed to prove that the cheques in question were issued for discharging a legally enforceable debt due to the appellant, is nothing but an outcome of perverse appreciation of evidence. It is further submitted that the learned Magistrate erred in holding that the appellant-complainant has failed to prove the case against the first respondent-accused beyond reasonable doubt and, therefore, the appellant -accused is entitled to get the benefit of doubt. It is the contention that the appellant had in fact, established the commission of offence under section 138, N.I.Act by the first respondent in both these cases.

8. Per contra, the learned counsel for the common first respondent contended that the order of acquittal passed by the court below in the above Calender Cases after a well-merited consideration. No ground whatsoever has been made out by the

appellant for interference in invocation of appellate jurisdiction. A scanning of the impugned judgments would reveal that the first respondent was acquitted in both these cases on exactly the same ground. It was found that the cheques involved in both these cases were issued for Archana Oil Industries by its proprietor. But, at the same time, the appellant has failed to bring out record the accused appropriately inasmuch as only the first respondent herein was arraigned as the accused stating that he is the proprietor of Archana Oil Industries and at the same time, failed to make Archana Oil Industries, the concern, as an accused. Though, both the private complaints were filed in the name of P.G.Joshua by PW1 in his capacity as power of attorney of the P.G.Joshua in both these cases power of attorney was not filed at the time of filing the complaint. In fact, in both those cases the power of attorney was executed and produced only during the trial stage. It was also held in both these cases relying on the decision of the Hon'ble Apex Court in **John K Abraham v. Simon C Abraham** reported in 2014(1) KLT 90 that the complainant-appellant had failed to establish that the complainant was having adequate fund to advance such a huge amount of Rs.9,00,000/- (rupees nine lakhs) and therefore, the complainant is not entitled to get the benefit of the presumption available under sections 118

and 139 of the N.I.Act. The learned counsel appearing for the appellant contended that the finding to the effect that the accused was not properly arraigned in this case owing to the failure to bring the concern Archana Oil Industries among the array of accused, cannot be said to be an illegality that vitiated the trial. According to him, since the first respondent was the proprietor of the concern Archana Oil Industries and that Archana Oil Industries is not a partnership firm whilst only a proprietorship in view of the position of law the proprietor alone need be brought on record as an accused. To bring home the contentions the learned counsel relied on a decision of the High Court of Madras in **P.Muthuraman v. Padmavathi Finance Regd.** reported in 1994 (80) CC 656 and the decision of the Hon'ble Apex Court in **M/s.Ashok Transport Agency v. Awadhesh Kumar and another** reported in AIR 1999 SC 1484. Relying on the said decisions it is contended that in the case of a proprietary concern it is only the business name in which the proprietor of the business carries on the business and, therefore, the suit by or against the proprietary concern is by or against the proprietor of the business. In the said circumstances, it is contended that the learned Magistrate erred in assigning non-joinder of the concern Archana Oil Industries one of the reasons for acquitting the

accused. In the decision in **Muthuraman's** case (supra) the High Court of Madras held that a sole proprietary concern is not a legal party apart from the sole proprietor and therefore, there is no need to make a sole proprietary concern a party in a complaint for prosecution under section 138 of the N.I.Act. Further it was held therein that the sole proprietary concern is not a company within the meaning of company as defined under the explanation to Section 141 of the Negotiable Instruments Act, 1881. In fact, that was the basis for the finding that the sole proprietary concern need not be a party apart from the sole proprietor. In the decision in **M/s.Ashok Transport Agency's** case (supra) the Hon'ble Apex Court was dealing with a civil appeal arising from a suit for eviction filed against a proprietary concern and two other persons. After referring to the provisions under Order XXX Rule 10 of the Code of Civil Procedure it was held that a proprietary concern is only a business name and it is the proprietor who carries on the business and therefore the suit by or against such a concern has to be by or against the proprietor of the business concern.

9. For a proper consideration of the aforesaid rival contentions it is also relevant to refer to section 141 of the N.I.Act. It reads thus:-

"141. Offences by companies.- (1) If the person

committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purpose of this section,-

(a) "Company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm

10. A close scrutiny of explanation to section 141(2) would reveal that going by the same the term 'company' means any body corporate and it includes a firm or other association of individuals. It is not disputed before me that in the case of a firm besides the director who is responsible for the day to day affairs the firm should also be in the array of accused. But, in the case of a sole proprietary concern there will not be any association of individuals and, in fact, it is only a business being conducted by its proprietor in the name of the proprietary concern. In otherwords, as held by the Hon'ble Apex Court the proprietary concern is only the business name and it is that very proprietor of the business himself who carries on the business. When that be so, I do not find any reason to disagree with the dictum laid down in **Muthuraman's** case (supra) to the effect that in the case of a sole proprietary concern it is not a company within the meaning of company as defined under the explanation to section 141(2) of the N.I.Act and therefore, there is no need to make the sole proprietary concern a party part from its sole proprietor, in a complaint filed under section 138 of the N.I.Act. In this case there is no case that apart from the first respondent any other proprietor is or proprietors are involved in the business of the concern. In otherwords, there is no case that Archana Oil

Industries is not a sole proprietorship. in the light of the decision referred (supra) there is no reason for upholding the contention that besides making the sole proprietor viz., the first respondent herein as the accused the proprietary concern also ought to have been made as an accused in the complaint filed under section 142 ,N.I.Act alleging commission of offence under section 138 of the N.I.Act. In the said circumstances, the finding that the Archana Oil Industries ought to have been made an accused besides the first respondent herein cannot be sustained. But, at the same time, it is to be noted that despite holding as such the learned Magistrate did consider the matter on merits. Therefore, I will proceed with the consideration.

11. A scanning of the impugned judgments would reveal that the trial court also found that the complaint was filed by PW1 in his capacity as the power of attorney holder of the complainant- P.G.Joshua but, at the same time, power of attorney was not filed along with the complaint and, in fact, it was produced, rather it was executed much later to the filing of the complaint and naturally it was produced not along with the complaint but only belatedly. In Crl.A.No.974/2014 arising from C.C.No.1/2014 deposition in another proceedings was produced as Annexure-D1 as there is a reference about an earlier power

attorney, there. But, at the same time, it is the admitted position that the power attorney in question was executed in favour of PW1, Soloman in both these cases, much later to the filing of the complaint and naturally they were produced only after the trial. Questions emerge in such situation are whether the trial court was justified in taking cognizance on the complaint and if at all, it is found that there was no illegality in the matter of taking cognizance then, the next question is whether PW1 was a competent witness in both the aforesaid cases and what is the evidentiary value of his deposition in relation to the transactions involved in these cases in the absence of a specific pleading in the respective complaints regarding his personal knowledge about the transactions involved. The learned counsel for the appellant contended that the decision of the Hon'ble Apex Court in **Narayanan v State of Maharashtra & another** reported in 2013(4) KLT 21 to the extent it pertains question Nos. 3 and 4 referred therein call no application in the cases on hand and in a bid to establish that the learned counsel relied on the decision of the Hon'ble Apex Court in **A.C.Narayanan v State of Maharashtra & another** reported in AIR 2015 SC 1198. In the decision in **A.C.Narayanan v State of Maharashtra & another** reported in AIR 2015 SC 1198 the Hon'ble Apex Court considered

the question whether the case of the appellant therein was fully covered by the decision of the Larger Bench in the decision reported in **Narayanan v State of Maharashtra & another** reported in 2013(4) KLT 21. It will only be apropos to refer to the decision of the Hon'ble Apex Court in **Narayanan's** case (supra) reported in 2013 (4) KLT 21 for a proper appreciation of the contentions and for a proper decision. Evidently, in the decision reported in 2013(4) KLT 21 the following questions were considered by the Larger Bench, as is evident from paragraph 15 thereunder:-

- (i) Whether a Power of Attorney holder can sign and file a complaint petition on behalf of the complainant?/Whether the eligibility criteria prescribed by Section 142(a) of N.I.Act would stand satisfied if the complaint petition itself is filed in the name of the payee or the holder in due course of the cheque?
- (ii) Whether a Power of Attorney holder can be verified on oath under section 200 of the Code?
- (iii) Whether specific averments as to the knowledge of the Power of Attorney holder in the impugned transaction must be explicitly asserted in the complaint?
- (iv) If the Power of Attorney holder fails to assert explicitly his knowledge in the complaint then can the Power of Attorney holder verify the complaint on oath on such presumption of knowledge?
- (v) Whether the proceedings contemplated under Section 200 of the Code can be dispensed with in the light of

Section 145 of the N.I.Act which was introduced by an amendment in the year 2002?

The answer to the said questions on reference arrived from paragraph 26 of the said decision and they run as follows:-

“(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 witnesses to 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.”

Paragraph 27 of the said decision would reveal that after considering the aforementioned questions referred in the manner given in paragraph 26 the matter was remitted to the appropriate bench for deciding the case on merits. It was pursuant thereto that the decision in **A.C.Narayanan v State of Maharashtra & another** reported in AIR 2015 SC 1198 was rendered.

12. In the light of the answer-1 to the reference made in **A.C.Narayanan** 's case to the Larger Bench, there cannot be any doubt with respect to the position that the power of attorney holder could sign and file a petition on behalf of the complainant. Question No.3 which was referred was as to Whether specific averments as to the knowledge of the Power of Attorney holder in the impugned transaction must be explicitly asserted in the complaint. The learned counsel for the appellant attempted to canvass the position that considering the fact that the reference was made in a case which arose from an order of issuance of process against the appellant therein, in respect of an offence punishable under section 138 of the N.I.Act the answer to the reference with respect to the aforesaid question should be

understood to have applicable only in respect of such situations and such situations alone, as obtained in that case. I have already adverted to very question No.3 which was referred before the Larger Bench. In the context of the said question it is relevant to refer to the answer by the Larger Bench in respect of the said question, at the risk of repetition. It was answered as hereunder:-

"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 could not be examined as a witness in such a case."

13. In both these cases, evidently, the complainant is P.G.Joshua and the complaint was filed in the name of the said Joshua by PW1 claiming the status of his power of attorney holder. Evidently, it was filed as hereunder:-

"P.G.Joshua, aged 54 years, S/o. Daniel John, Puthen PeediKayil House, Iranikudy P.O., Nooranadu, Mavelikkara. Rep. by the power of attorney holder, K.Soloman, Kottanickal House, Iranikudy P.O., Nooranadu, Cherumukha, Mavelikara."

14. The question is whether PW1 could have claim the status of power of attorney holder when the very power of attorney was actually executed and the power of attorney authorizing him to act as the agent for the purpose of giving

evidence and to file the same, was executed only later to the filing of the complaint and consequently, produced only subsequent to the filing, to be precise, during the trial stage. There cannot be any doubt with respect to the position that to claim as a donee of power of attorney the donor of power of attorney must have executed power of attorney in favour of a person who claims to be the donee of the power of attorney. The term power of attorney has been defined under section 1A of the Power of Attorney Holders Act, 1882. It reads thus:-

"1A. Definition.- In this Act, "Power-of-Attorney" includes any instruments empowering a specified person to act for and in the name of the person executing it."

According to Osborn Concise Law Dictionary 7th edition a power of attorney means 'a formal instrument by which one person empowers another to represent him, or act in his, stead for certain purposes; usually in the form of a deed poll, and attested by two witnesses'. Therefore, the question is when there was no such conferment of power by one person to another to represent the person concerned, can the person claiming entrustment of authorization to represent the other could be said to be power attorney holder. In order to claim that one is holding the said formal instrument, namely, power of attorney he/she should be a donee of a power attorney or in otherwords, a power of attorney

holder. Going by the definition and the provisions under the Powers of Attorney Act, 1882 and in the absence of any other specific provision dealing with the right to act as a power of attorney in the N.I.Act PW1, Soloman could not have claimed the status of power of attorney holder prior to the come into existence of the very power of attorney. In such circumstances, the question is what is its impact? The learned counsel for the appellant attempted to justify the action in filing the complaint in question, in both these cases prior to the very execution and the production of the power of attorney claiming status of power of attorney holder, during the later stage, relying on a decision of the Hon'ble Apex Court in **Jugraj Singh and another v. Jaswant Singh and others** reported in AIR 1971 Supreme Court 761. That was a case wherein a person was authenticated to execute and present a sale deed for registration. The vendor concern was in the united State of America. Admittedly, in that case a power of attorney was firstly executed, but at the same time, it was not duly authenticated. Noticing the said defect relating the absence of due authentication a second power of attorney was executed and it is to be noted that prior to the execution of the second power of attorney the transaction and the registration are taken place. In such circumstances, the question was whether the second power

of attorney could validate the transaction and registration though the transaction and the registration had taken place prior to the execution of the second power of attorney. A scanning of the decision would reveal that the Hon'ble Apex Court held that in such circumstances, the second power of attorney could be and should be treated as one ratifying the earlier one and such ratification would relate back to the date of act done and the agent would be put in same position as if he had authority to do that act at the relevant point of time. After construing the position the Hon'ble Apex Court held the illegality in registration had been cured. The learned counsel attempted to canvass the position that the term rectification should be taken understood as rectification of the act done. In this case, according to him such an interpretation would validate the action in filing the complaint without, or in otherwords, before the execution of the power of attorney. I am afraid the said construction would not be in tune with the exposition of law by the Hon'ble Apex Court in the aforesaid decision. Going by the Oxford Advanced Learners Dictionary the word rectify means to put right something that is wrong. In such circumstances, there cannot be any doubt with respect to the position that, when something is not there in existence it cannot be said that something was wrong in that non-

existent conveyance and in such eventuality there would be no scope for rectifying that. That apart, in the decision relied on, a power of attorney was first registered authorizing a person to execute and present a sale deed for registration. On its strength he conducted the transaction and also the registration. The defect in the power of attorney on the strength of which he executed and presented the sale deed was brought out later and it is to rectify the said defect of absence of due authentication that the second power of attorney was duly authenticated. It was in the said circumstances that the Hon'ble Apex Court held that the second power of attorney is a ratification and owing to such ratification of the relied facts to date of the action and the agent was put in the same position as whether had the authority to do that act at the relevant point of time. It is evident from the fact that the Hon'ble Apex Court held the second power of attorney validated the transaction and registration was only a rectification of the earlier defective power of attorney. It is evident from the decision reported in **A.C.Narayanan v State of Maharashtra & another** reported in AIR 2015 SC 1198 to the extent it pertains to the case of **A.C.Narayanan's** case the Hon'ble Apex Court found that in that case the Magistrate had taken cognizance of the complaint without prima facie establishing the fact as to whether the power

of attorney existed in the first place and whether it was in order.

Paragraph 16 thereunder commences as follows:-

"In this case Magistrate had taken cognizance of the complaint without prima facie establishing the fact as to whether the Power of Attorney existed in first place and whether it was in order."

15. Indisputably, that was a case wherein the complaint against the appellant therein was not preferred by the payee or a holder in due course, as in this case. Going by the decision in such circumstances before taking cognizance such prima facie satisfaction ought to have been arrived. In otherwords, before taking cognizance a Magistrate was bound to consider the question and arrive at a prima facie satisfaction that a power of attorney exists and it was in order. When, there was no power of attorney the question whether it was in order or not, does not arise. In this case in view of the indisputable position obtained indubitably, it can be said that no power of attorney was in existence and it was brought into existence much later to the filing of the complaint. In short, in this case PW1, Soloman filed the complaint in question in both these cases, before the existence of power of attorney or in otherwords, before P.G.Joshua, the complainant empowers him through a duly authenticated power of attorney to act as his power of attorney

holder. It is to be noted that in the light of such consideration in the case of **A.C.Narayanan** 's case (supra) the Hon'ble Apex Court not only set aside the judgment of eviction but also quashed the entire proceedings in question against him. Obviously, in view of the incurable illegality in the matter of initiation of proceedings without a duly authenticated power of attorney. In such circumstances I have no doubt with respect to the position that non-existence of a power of attorney would incapacitate a person from filing a complaint on behalf of another for prosecution for an offence under section 138 of the N.I.Act, claiming as a power of attorney holder. Admittedly, in this case PW1-Soloman was not the payee and payee was P.G.Joshua-the complainant. PW1 was not the holder in due course also. When that be the case a very initiation of the prosecution and the action on the part of the learned Magistrate in taking cognizance without the power of attorney is liable to be interfered with. But, at the same time, in this case it is evident that after considering the matter on merits the first respondent accused was acquitted in this case. In such circumstances, I do not find any reason for quashing the complaint as the trial after taking cognizance of such complaint had already resulted in the acquittal of the first respondent. In short, the long and short of the above discussion is that the orders

of acquittal call for no appellate interference. In the result, Crl.A.No.974/2014 challenging the judgment dated 9.8.2014 in C.C.No.1/2014 passed by the Court of the Judicial First Class Magistrate-III, Mavelikkara and Crl.A.No.975/2014 challenging the order dated 9.8.2014 in C.C.No2/2014 of the same court are liable to be dismissed and accordingly they are dismissed.

Sd/-

C . T . RAVIKUMAR

JUDGE