

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO.532 OF 2022

M/s. Aparna Communication Links,
Through its Proprietor & Authorised
Signatory

1. Sau Aparna Rajesh Dengre,
Aged : 54 Yrs., Occ.: Business,

2. Rajesh Jugalkishore Dengre,
Aged : 55 Yrs., Occ.: Business,

Both R/o. Inside Jawahar Gate,
Behind Rampyari Temple,
Near Vaidya Gaurasa Amravati,
Distt. Amravati- 444601

.... **PETITIONER**

// VERSUS //

Rajshree Agencies,
Through its Proprietor,
Chetan S/o. Brijkishore Chandak,
Aged about 47 Yrs., Occ.: Business,
Office at: Kachipura,
New Ramdaspath, Nagpur 440010
Acting through its Power of Attorney
Holder, Ganesh Subhash Shripate,
Aged about 45 Yrs., Occ.:Service,
R/o. Hiltop Colony, Amravati Road,
Dawalameti, Nagpur

.... **RESPONDENT**

Mr A. S. Dhore, Advocate for the petitioner
Mr S. G. Karmarkar, Advocate for the respondent

CORAM : G. A. SANAP, J.
DATED : 15th DECEMBER, 2022

ORAL JUDGMENT :

1] Heard.

2] RULE. Rule made returnable forthwith. Heard finally by consent of learned Advocate for the parties.

3] By this writ petition, the petitioner/accused has challenged the order dated 08.07.2022, passed by the learned Judicial Magistrate First Class, Nagpur, whereby the learned Magistrate rejected the objection raised by the petitioner/accused to the maintainability of the affidavit of respondent/complainant and granted permission to the respondent/complainant to examine himself, after leading the evidence of his constituted attorney.

4] It is submitted that the power of attorney holder has deposed about the facts stated in the complaint. The power of attorney holder has specifically stated that he was concerned with the day to day affairs and business transaction of the proprietary concern. The transaction, which is part of the contract, according

to the power of attorney holder was within his personal knowledge. After completion of evidence of power of attorney holder, the learned Magistrate granted permission to the respondent/complainant to examine himself. The petitioner/accused raised the objection for the same. Learned Magistrate overruled the objection.

5] It is the principal contention of the petitioner/accused that the leave of the Court was not sought at the stage of the examination of the power of attorney holder, to examine the respondent/complainant later on. Learned Advocate submitted that since the proceeding under Section 138 of the Negotiable Instruments Act, 1881 is quasi civil proceeding, the same would be governed by provision of Order XVIII Rule 3-A of the Code of Civil Procedure. It is pointed out that order of examination has been provided under Order XVIII Rule 3-A of the Code of Civil Procedure.

6] At the stage of hearing of this petition, the learned Advocate for the respondent/complainant pointed out that the complainant was sought to be examined to prove the notice dated 28.08.2021 received by the respondent/complainant from the petitioner/accused after completion of evidence of power of attorney holder. Learned Advocate submitted that this notice can be proved by examining other witnesses. Even for that purpose he may make an application, before the learned Judicial Magistrate First Class, Nagpur, to recall the power of attorney holder and to lead his evidence to this limited extent. It is undisputed that this notice was received by the respondent/complainant after filing of affidavit of examination-in-chief of the power of attorney holder. Learned Advocate, therefore, submits that if such liberty is granted then subject to that liberty the order may be quashed and set aside and it be left open to the parties to take recourse to the appropriate remedy.

7] In view of this position, the writ petition is allowed. The order passed by the learned Magistrate dated 08.07.2022 is

quashed and set aside. The liberty is granted to the respondent/complainant to examine other witness to prove the notice. Further liberty is granted to the respondent/complainant to make an application under Section 311 of the Code of Criminal Procedure before the learned Magistrate to recall the power of attorney holder to prove the said notice. If such an application is made before the learned Magistrate for recalling the power of attorney holder, same be considered liberally in accordance with law.

8] The writ petition stands **disposed of**, accordingly. Rule made absolute in the above terms.

(G. A. SANAP, J.)

Namrata