IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL REVISION APPLICATION NO. 96 OF 2021
Shankar B. Maitra, Retired Director M/s. Maha Container Private Ltd. Vs. M/s. Ispat Industries Ltd. Through Shri Taher Suneli Asgar Ali Sunel and ors
WITH
CRIMINAL REVISION APPLICATION NO. 97 OF 2021
Shankar B. Maitra, Retired Director M/s. Maha Container Private Ltd. Vs. M/s. Ispat Industries Ltd. Through Shri Taher Suneli Asgar Ali Sunel and ors
WITH
CRIMINAL REVISION APPLICATION NO. 98 OF 2021
Shankar B. Maitra, Retired Director M/s. Maha Container Private Ltd. Vs. M/s. Ispat Industries Ltd. Through Shri Taher Suneli Asgar Ali Sunel and ors
WITH
CRIMINAL REVISION APPLICATION NO. 99 OF 2021
Shankar B. Maitra, Retired Director M/s. Maha Container Private Ltd. Vs. M/s. Ispat Industries Ltd. Through Shri Taher Suneli Asgar Ali Sunel and ors

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Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

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Mr. A.D.Sonak, Advocate for the applicant
Ms. Mitisha Kotecha, Advocate h/f Mr. M. Anilkumar, Advocate for Respondent No.1
Mr. R.R.Vyas, Advocate for Respondent Nos. 3(1) & 3(2).
Mr. S.M.Ghodeswar, APP for respondent No.4/State

CORAM : AVINASH G. GHAROTE, J.
DATE : 20/07/2022

1. Heard Mr. A.D. Sonak, learned counsel for the applicant, Ms Mitisha Kotecha, learned counsel for respondent No.1 and Mr. R.R. Vyas, learned counsel for respondent Nos. 3(1) and (2).

2. The applicant was the original accused no.3 in the proceedings under Section 138 of the Negotiable Instruments Act (For short "NI Act") instituted by respondent no.1 against the respondent no.2-M/s. Maha Containers Pvt. Ltd. in which, the applicant and the respondent no.2, were made as accused nos. 2 and 3 on the ground that they were Directors of M/s. Maha Containers Pvt. Ltd. The learned trial Court, by judgment dated 05.01.2010, has convicted the accused nos.1, 2 and 3 for the offence under Section 138 of the NI Act and has sentenced the accused no.2-K.G.K. Rao and accused no.3-Shankar V. Maitra for six months simple imprisonment each and so also directed payment of compensation of Rs.35,00,000/-, in default, 6 months simple imprisonment each.

3. An appeal carried against aforesaid judgment came to be dismissed by the learned Sessions Judge by judgment dated 31.08.2021, confirming the conviction rendered by the learned Special Court.

4. During the pendency of the present revision the original accused no.2 (non-applicant no.3) passed away, as a result of which his legal representatives were brought on record as non-applicant nos.3 (1) & (2) as the sentence imposed is comprised of compensation too. For the sake of convenience, the parties are referred to as they were before

the learned Special Court.

5. Mr. Sonak, learned counsel for the applicant/original accused no.3, submits as under:

i] The complaint under Section 138 of the NI Act was filed by the complainant/Company (respondent no.1 herein), through a Power of Attorney holder, namely, Taher Suneli s/o Asgar Ali Suneli. Taher Suneli was appointed as Power of Attorney of the complainant-company by virtue of a Power of Attorney ("POA" hereinafter for short) dated 09.04.1999 (Exh.-191), claimed to have been executed in his favour by one M.P Sinha, Director of complainant/Company and the complainant/Company, is claimed to have executed a POA in favour of Mr. M.P. Sinha, in pursuance to a resolution of the Board of Directors, dated 30.07.1998. It is claimed that accordingly, the complainant/Company on 30.07.1998, had executed a POA in favour of Mr. M.P. Sinha, Director-incharge, Kalmeshwar Works of the complainant. Under this POA dated 30.07.1998, it is claimed that Mr. M.P. Sinha had the power to further sub-delegate the powers conferred upon him by the POA dated

30.07.1998, to a third person, and accordingly under such authority to sub-delegate, the POA dated 09.04.1999 (Exh.-191) is claimed to have been executed in favour of Mr. Taher Suneli authorizing him to present the complaint and institute proceedings. It is contended that the original of the POA dated 30.07.1998 on the strength of which the POA dated 09.04.1999 (Exh.191) was executed in favour of Mr. Taher Suneli, was never placed on record of the Special Court. It is however not disputed that the resolution dated 30.07.1998, by the Board of Directors appointing Mr. M. P. Sinha Director incharge for Kalmeshwar work, as attorney of the company has been placed on record at Exh.192. It is further contended that Taher Suneli, did not enter the witness box on behalf of the complainant.

ii] The person who has entered into the witness box on behalf of the complainant was one Anil Modani who claimed that he had been given a POA to represent the company vide Exh.73 on 12.12.2006, which POA is claimed to have been executed in his favour by one Mr. Vinod Garg. Mr. Vinod Garg in turn claims a POA in his favour by complainant/Company dated 30.07.1998 (Exh.193), on the basis of which, it is claimed that he had constituted Mr. Anil Modani as the POA for the complainant/Company in view of the power of sub-delegation conferred upon him.

iii] It is contended that the original of Exh.193, the POA by the complainant/company dated 30.07.1998, in favour of Mr. Vinod Garg was never placed on record, as a result of which the authority of Mr. Vinod Garg, to sub-delegate or appoint Mr. Anil Modani as a constituted attorney for complainant/Company was not proved on record, on account of which, there was no legal sanctity in Mr. Anil Modani on the strength of the POA at Exh.73 dated 12.12.2006 to represent the complainant/Company. It is further contended that in fact Exh.73, speaks of a POA dated 21.04.1998 and not a POA dated 30.07.1998, executed by complainant/Company- in pursuance of board resolution of even date in favour of Mr. Vinod Garg, whereas Exh.93, which is again a Power of Attorney by complainant/Company in favour of Mr. Vinod Garg and is dated 30.07.1998. The POA dated 21.04.1998 was thus never placed on record. It is thus contended that there was no legal authority either in Mr.Taher Suneli or in Mr.Anil Modani to represent the complainant/Company and therefore the complaint instituted by the complainant/ Company through Mr. Taher Suneli and carried forward through Mr. Anil Modani was legally infirm and there could not have been any conviction by the learned Special Court on its basis.

iv] Reliance is placed upon **Vedprakash Garg Vs. Mohd. Aslam Khan; 2016 ALL MR (Cri.) 4219**, which considers **A.C.Narayanan Vs. State of Maharashtra and anr.; 2013 All MR (Cri.) 4048 (SC) and G. Kamalakar Vs. Surana Securities Ltd.**, to hold that where in a complaint instituted on the basis of a POA, the person, who presented the complaint had not been examined and his authority is also not on record, the complaint cannot be said to be legally instituted and therefore was not maintainable.

v] It is further contended that the applicant Mr. Shankar Maitra had resigned from the post of Director of M/s. Maha Containers Pvt. Ltd. on 15.02.1999, and the resolution dated 17.02.1999 was passed accepting the resignation. To demonstrate that, the resolution dated 17.02.1999 was placed on record, which being admitted by the accused no.2 in his cross-examination, was marked as Exh.159, and it is contended that the complaint being filed on 16.04.1999, was therefore clearly not maintainable as against accused no.3-Shankar Maitra on the above ground.

vi] Reliance is also placed on cross-examination of the accused no.2 Mr. K.K.R. Rao at Exh.128-E wherein in para 31, he admits the resolution dated 17.02.1999 accepting the resignation of the applicant/accused no.3.

vii] As Form 32 was not placed on record, reliance is placed on ***Soumil Dilip Mehta. vs. State of Maharashtra, AIR 2002 Bombay 194,*** (para 6), which holds that resignation of a Director comes into force on the date of acceptance of the resignation and the filling in of Form 32 is the duty of the Company Secretary and not of individual Director.

It is therefore submitted that the complaint itself was not maintainable for lack of authority in Mr. Taher Suneli and could not have been prosecuted by Mr. Anil Modani for the same reason, on account of which the same ought to have been dismissed.

6. Ms. Kotecha, learned counsel for complainant/Company opposes the above contentions and submits that though the original POAs Exh.191 and 193 were not produced, the true copies were placed on record and so also true copies of the board resolution dated 30.7.1998 in favour of Mr. M.P. Sinha (Exh.192) and the board resolution dated 21.4.1998 in favour of Mr. Vinod Garg (Exh.194) were placed on record and therefore, the requirement of authorization stood satisfied. She further by inviting my attention to the additional evidence of Mr. Anil Modani at Exh.187 submits that he is the person who has proved the board resolution as well as the POAs. It is further submitted that the presumption under Section 85 of the Indian Evidence Act was attracted in the matter, as the POAs were notorized, considering which also they were deemed to have been proved. She has taken me through the common evidence of Mr. Anil Modani and his further examination-in-chief to submit that the requirements of the Evidence Act, of proving the aforesaid documents have been complied with. She further places reliance upon the cross-examination of the

accused no.3 at Exh.174-C wherein the signature on the cheques have been admitted by the applicant/accused no.3.

She places reliance upon ***M M T C Limited Vs. MEDCHL Chemicals and Pharma (P) Limited; 2002 (1) SCC 234*** (paras 11 and 12); ***Bhupesh Rathod Vs. Dayashankar Prasad Chaurasiya; 2022 (2) SCC 355*** (paras 22, 23, 26); ***M/s TRL Krosaki Refractories Ltd. Vs. M/s SMS Asia Private Limited; 2022 AIR (SC) 1315*** (Para 15 and 16); and ***APS Forex Services Private Ltd. Vs. Shakti International Fashion Linkers; Criminal Appeal No. 217 of 2020***, decided on 14.2.2020 by the Hon'ble Apex Court (para 5.2), in support of her contentions and submits that the judgments impugned ought not to be disturbed.

7. A perusal of the complaint indicates that the complaint has been filed by Ispat Industries Limited through Taher Suneli Asgar Suneli, the Junior Manager/Officer (Marketing), who is claimed to be authorized by the company to institute, sign, verify, prosecute and conduct the complaints under the provision of NI Act and IPC by giving him a POA, and the said person is also claimed to be well conversant with the facts and circumstances leading to the filing of the complaint. It is contended that various cheques on account of supply of steel were issued by the accused no.1 Company, which were signed by the accused no.2 and 3 as directors of

the accused no.1 company, which cheques were issued in favour of the complainant. As these cheques when presented were dishonored and after issuance of notices under Section 138 of the NI Act there was no payment, complaints were filed through the power of attorney holder who was also Junior Manager/Officer (Marketing) of the complainant.

8. During the course of the proceedings, the said Mr.Taher Suneli (Junior Manager/Officer Marketing) is claimed to left the company and the complaint thereafter is prosecuted by Mr. Anil S/o Madanmohan Modani, General Manager (Commercial) of the complainant-company who was claimed to have been authorized by a POA dated 12.12.2006 (Exh.73). The said Mr.Anil Modani entered into the witness-box and is claimed to have proved the various power of attorneys as well as the resolutions of the board of directors. Since there was an admission on behalf of the applicant/accused no.3, who had entered into witness-box, of the cheques having being signed by him, it was held that the presumption under Section 139 of the NI Act stood attracted and therefore the complaint came to be allowed, by convicting the original accused nos.1 to 3 under the provision of Section 138 of the NI Act. Compensation is also directed to be paid. An appeal carried to the learned Sessions Court came to be dismissed by the judgment dated 31.8.2021. It is against this, that the present revisions have been filed.

9. The facts leading to the revisions are same though there may be difference in the cheque amounts, numbers, dates and the consequent actions of presentation, dishonour and notices. The legal propositions raised are also same and therefore all the revisions are being decided by this common order.

10. What is to be considered, is the authorization of the person who has instituted the complaint and of the person who has entered into the witness-box and subsequently prosecuted them.

11. The authorization of Mr. Taher Suneli to institute the complaint is claimed to be on the basis of a resolution dated 30.7.1998 claimed to have been passed by the Board of Directors of the company at its meeting at Kolkata, whereby it was resolved that Mr. M.P. Sinha, director in-charge for Kalameshwar Works was appointed as the lawful attorney of the company and the company do issue POA in his favour as per the draft POA placed before the meeting and approved. A certified true copy of this resolution, dated 30.7.98 is at Exh.192.

11.1. It is in pursuance to this resolution that a POA came to be executed by the complainant company on 30.7.1998 in favour of Mr. M.P. Singh. It is claimed to have contained a power/authority to further sub-delegate the powers contained therein. It is however material to note that though a copy of this POA has been placed on record of the Trial Court as Article "A", the same has not been proved. Thus, the original authorization by the complainant company in favour of Mr. M.P. Sinha does not stand proved.

11.2. Mr. M.P. Sinha (director in-charge Kalmeshwar Works) on the strength of the POA dated 30.7.1998 (Article-A) executed a POA in favour of Mr.Taher Suneli [Junior Officer (Marketing)] on 9.4.1999, whereunder the said Mr. Taher Suneli was authorized to commence, initiate and prosecute the proceedings for enforcing the payments against defaulters, as the lawful attorney of the company. This POA dated 9.4.1999 in favour of Mr. Taher Suneli is on record at Exh.191 and is merely an attested document.

11.3. The mode of proving the document, such as a POA, would be to examine either the executant or the witnesses to the same by producing on record the original POA as contemplated by Sections 61 and 62 of the Evidence Act. Another mode, would be on the basis of the presumption under Section 85 of the Evidence Act in case the requirements for invoking and applying such presumption were satisfied.

11.4. However, it is an admitted position on record, as conceded by Ms. Kotecha, learned counsel for the complainant that the original of this POA at Exh.191 was never produced on record, but only a true copy of the same was produced on record. What is also material to note, is that neither Mr. M.P. Sinha who has executed this POA nor the witnesses to the same, namely Mr. Navin Jain and Abhay Garg have been examined to prove this POA.

11.5. Though Exh.191, is claimed to have been signed before the notary, there is merely an attestation whereas the requirement under Section 85 of the Evidence Act for inviting the presumption is of "execution before and authentication by a notary public". It is a settled position of law that, a mere attestation does not comply with the requirement of Section 85 of the Evidence Act. I have had an occasion to consider this position in the case of ***Vikky Vs. Navbharat Press, through its Authorized Signatory POA Recovery In-charge, Maheshprasad Gokulprasad Sarangi, 2022 SCC Online Bombay 713***, in which after considering the position and the various case laws thereupon, I have held that the requirements of Section 85 of the Evidence Act are not satisfied by a mere attestation, as authentication is something more than attestation as the same involves ensuring that executant is the person before him and is identified to the satisfaction of the Notary Public; the record being in due form of law; the executant confirming his knowledge regarding the contents of the documents to be true and genuine; the actual execution of the document before him and the executant having admitted voluntarily to have executed the POA/document coupled with the appropriate register maintained by the Notary Public in this regard, with according entries, therein. Therefore, the mere attestation of Exh. 191 would not be enough to attract the presumption under Section 85 of the Evidence Act. That being the position and neither the executant nor the witnesses to the POA having been examined, Mr. Anil Modani could not be said to be a person who could be competent in law to have proved the POA at Exh.191 as he was not present when the same was executed, in favour of Mr. Taher Suneli.

11.6. That apart, when the POA in favour of Mr. M.P. Sinha by the complainant/Company (Article-A) itself has not been proved, the question of Mr. Taher Suneli acting for and on behalf of the complainant company, on the basis of the POA executed by Mr.M. P. Sinha in his favour, at Exh. 191 did not arise at all. In this context, it would be material to note that the certified true copy of the resolution of the Board of Directors of the complainant/Company dated 30.7.1998 (Exh.192) merely mentions the Board of Directors having resolved to appoint Mr. M.P. Sinha as the POA of the complainant/Company and to issue POA in his favour as per the draft POA placed before the meeting and approved. This resolution at Exh.192 therefore cannot be construed as one authorizing Mr.Taher Suneli to institute the complaint on behalf of the complainant company.

11.7. It is no doubt true that it was permissible for the complainant/Company to have cured the aforesaid defect, as it is a curable defect, by placing on record a subsequent POA or authorization whereby the action of Mr. Taher Suneli stood ratified, however the record does not indicate this having been so done.

12. Insofar as the further prosecution of the complaint by Mr. Anil Modani is concerned, no doubt that the same is permissible in law. However, as Mr. Anil Modani also claims to represent the complainant/Company on the basis of the POA executed in his favour by Mr. Vinod Garg on 12.12.2006 (Exh.73), it is necessary to consider the source of such power. Exh. 73 itself makes a mention in paragraph 3 on the first page that the said POA was being executed by Mr. Vinod Garg on the basis of a POA dated 21.4.1998 claimed to have been executed by the complainant/Company in pursuance of a board resolution of even date. This POA dated 21.4.1998 claimed to have been executed by the complainant/Company in favour of Mr. Vinod Garg, has not been placed on record. What has been placed on record is a POA dated 30.7.1998, claimed to have been executed by the complainant/Company

in favour of Mr.Vinod Garg at Kolkata. It is therefore apparent that the POA dated 21.4.1998 on the basis of which Mr. Vinod Garg is claimed to have executed the POA dated 12.12.2006 (Exh.73) in favour of Mr. Anil Modani has not been brought on record and therefore there is equally an absence of the source of the power of Mr. Anil Modani to continue the proceedings, as is claimed to be so on the basis of the POA dated 12.12.2006.

12.1. Here also the mode of proof is lacking, inasmuch as neither Exh.193 nor Exh.73 satisfy the requirement of Section 85 of the Evidence Act so as to attract the presumption therein, since they are merely attested by the Notary Public and not authenticated as is the requirement of Section 85 of the Evidence Act. Nor have the executants or the witnesses to the said POA have been examined. Mr.Anil Modani, on his own, in my considered opinion, who was neither the signatory to Exh. 193 or Exh. 73, nor the witness to the same, could not be said to be a person competent in law to have proved the execution of the said POAs, or for that matter their contents.

12.2. In his additional affidavit at Exh.187, Mr.Anil Modani says that he has seen the entire record maintained by the company and he identifies signatures on the POAs at Exh. 191, 193 and 73 and therefore the same have been marked as exhibit. It is equally well settled position of law that a mere marking of a document as an exhibit, does not dispense with the proof of the execution of the document or its contents, and considering that neither the executants nor witnesses of the said documents were examined, nor the presumption under Section 85 of the Evidence Act was available in respect of these documents and so also Mr. Anil Modani was not the signatory to the same, he could not be said to be a person competent in law to prove the execution and so also the contents of these documents.

12.3. It is equally an admitted position as admitted by Ms.Kotecha, learned counsel for respondent No.1 that the original of Exh. 193 was also not placed on record and what was placed on record was merely a certified true copy which would also indicate that the primary document was not produced on record.

13. Though a copy of the resolution of the Board of Directors of the complainant company at Exh.194, dated 21.4.1998 has been placed on record, that does not assist the complainant/Company for that merely indicates that Mr.Vinod Garg was appointed as the lawful attorney of the company and the company was to issue POA in his favour as per the draft POA placed before the meeting and approved. The draft POA approved is not part of the resolution. Exh.194 therefore is not a document by which it can be said that Mr.Anil Modani

was authorized to prosecute the complaints further.

14. Though Ms. Kotecha, learned counsel has relied upon ***M M T C Limited*** (supra), it merely holds that even if the complaint on behalf of the company is presented by a person, it is not necessary, that the same ought to be continued by the same person throughout and it is permissible for a different person to represent the company at a later stage, considering what has been held in ***Associated Cement Company Ltd vs. Keshavanand; [(1998) 1 SCC 687]*** that a complainant in a Court has to be a corporeal person who is capable of making a physical appearance in the court and if the complaint is in the name of an incorporeal person (like a company or corporation), it is necessary that a natural person represents such juristic person in the Court, who the Court looks upon to be the complainant for all practical purposes, as the body corporate is the *de jure* complainant and must necessarily be associated with a human being as *de facto* complainant, to represent the body corporate. It is also held that in case even presuming that initially there was no authority, still the company can at any stage rectify that defect. There cannot be any dispute with the above proposition, however what is material to note, is that any defect in the institution of the proceedings on the ground of lack of authority, though a curable defect, the facts in the instant case, do not indicate that such a defect has been cured, at any point of time during

the proceedings before the learned Special Court.

15. ***Bupesh Rathod*** (supra) relied upon by Ms. Kotecha, learned counsel for the complainant/respondent no.1 also is on the same footing and relies upon ***Credential Finance Ltd. Vs. State of Maharashtra 1998 (3) Mh. L.J. 805***, which holds that it would be too technical a view to take to defeat the complaint merely because the body of the complaint does not elaborate upon the authorization. The artificial person being the company had to act through a person/official and only the existence of the authorization could be verified. In ***Bhupesh*** (supra) the complaint was filed by the Managing Director on behalf of the company in support of which a copy of the Board Resolution was filed along with the complaint. Though the board resolution was not signed, a Manager or Managing Director ordinarily by their nomenclature were held to be persons in charge of the affair of the company, which would entitle them to approach the Court. However, what is material to note is that in the instant matter even the claim that the persons instituting and prosecuting the complaint were the principal officers of the complainant/Company, was not proved as discussed later and therefore, on fact is not applicable.

16. ***M/s. TRL Krosaki Refractories Limited*** (supra) was a case in which the order passed by the Special Court taking

cognizance of the complaint under Section 138 of the NI Act and issuing summons was quashed by the High Court on the ground that the complaint was filed by incompetent person without the requisite averments in the complaint despite which cognizance was taken, as he had no knowledge about the alleged transactions nor had witnessed the same. Setting aside the order of the High Court it has been held by the Hon'ble Apex Court that in case of a company, the same can be represented by an authorized employee and an averment in the complaint to that effect would be sufficient material prima facie, for the learned Magistrate to take cognizance and issue process. It is therefore apparent that ***TRL Krosaki*** (supra) on facts is inapplicable.

17. ***APS Forex Services Private Ltd.*** (supra) is on the presumption under Section 139 of the NI Act being attracted once the accused admits the issuance of cheque which bears his signature. In the instant case, there is no doubt that the presumption under Section 139 of the NI Act is attracted as the accused no.3 admits in his cross-examination signing of the cheques by himself & the accused no.2, for purchasing steel from the complainant, however, the issue here is not regarding the presumption, but about the authorisation of the persons instituting and prosecuting the complaint.

18. The above discussion would categorically demonstrate that during the course of the trial before the learned Magistrate, neither the authorization of the person presenting the complaint, nor that of the person entering into the witness-box has been proved as per the requirement of the Evidence Act, as both of them claimed a right to institute and prosecute the complaint respectively under the POA executed in their favour, in view of which there was absolutely no legal authority whatsoever for the same, in absence of which neither the complaint could have been instituted by Mr. Taher Suneli, nor continued by Mr. Anil Modani, in absence of any ratification at any point of time during the proceedings before the learned Magistrate. Though the above proposition has been upheld in ***Vedprakash Garg & A.C. Narayanan*** (supra) relied by Mr. Sonak, learned counsel for the accused no.3, it is to be noted that both these judgments do not consider the case of a company but of an individual. However, that does not make the proposition inapplicable.

19. Even the non proving of the power of attorneys would not have come in the way of the complainant in instituting and prosecuting the complaint, as in absence of a POA, a complaint by a company can be instituted and prosecuted by a principal officer of the company. Though Mr.Anil Modani is claimed to be the General Manager (Commercial) of the complainant/Company and as such

would be a principal officer, capable of prosecuting the same, what is material to note is that no such document has been placed on record to indicate his appointment as a General Manager (Commercial). In his cross examination by Mr.R.R.Vyas, the learned counsel for the accused 1 & 2 (page 77), it has been specifically admitted by Mr.Anil Modani, that he had not produced any document to show that he was working as a General Manager (Commercial) of the complainant since 1990. It is thus apparent that, apart from a mere averment that he is the General Manager (Commercial) of the complainant/Company, which would indicate that he would fall within the meaning of the expression "principle officer", nothing has been placed on record to substantiate this contention, as a result of which there is no material/document on record to hold that Mr.Anil Modani was the principal officer of the complainant/Company.

20. There is similarly an absence of any document on record to indicate that Mr.Taher Suneli, was the Junior Manager/Officer (Marketing) of the complainant/Company. When a person in a legal proceeding claims to be a principal officer of a company, and therefore, authorized to prosecute and depose for the company, what is the minimum expected is that a document indicating his such employment with the company, which would indicate that he was a principal officer of the company, ought to be placed and proved on record and

specifically so, in proceedings where the accused is sought to be deprived of his liberty upon being convicted. In absence of any such documents on record indicating the employment of the persons instituting the complaint and/or prosecuting the same, it becomes impermissible for the Court to permit the continuation of the proceedings by holding such persons to be falling within the meaning of the expression “principal officer”. In the instant matter, even this requirement is not complied with, so as to hold that even in absence of authorization by way of a POA, the persons instituting the complaint and prosecuting it were, being the principal officers, capable of instituting and prosecuting the complaint.

21. A perusal of the judgment of the learned Special Court indicates that though the question about absence of authorization was raised before it, by relying upon Exh. 191 to 194 and Exh. 73, it has been held that the complaint has been properly instituted and Mr.Anil Modani was competent to depose on behalf of the company (paras 10, 11 & 12/pages 41 to 45). The fact that the POA claimed to have been executed by the complainant company in favour of Mr.M.P. Sinha was not proved, nor the fact that the POA dated 21.4.1998 in favour of Mr. Vinod Garg by the complainant/Company was not on record does appear to have been considered. Neither the fact that there was no document to indicate that the person who instituted the complaint, nor the one who

prosecuted it were in the employment of the company on various designations, has been considered. Same position is with the judgment of the learned appellate Court as is indicated by the perusal of para 13 of its judgment dated 31.8.2021.

22. The question of a legal and valid authorization, though a curable defect, in case the same remains uncured throughout the trial, it would then go to the very root of the matter as the very institution of the proceedings and its continuance, would then in absence thereof, be without authorization. The power or authority to act on behalf of someone, be it a company, corporation, firm or an individual, will have to be established during the course of the trial, and in case it is not so established, the institution and continuation of the complaint itself would become infirm in absence of authority in the person to institute and continue the same and the instant matter clearly indicates this position. Though the defect was curable, for reasons best known to the complainant, the same has not been cured, considering which, in my considered opinion, though the presumption u/s 139 of the NI Act is in favour of the complainant, however, in view of absence of authorization as indicated above, the complaint could not have been instituted and prosecuted.

23. The accused no.3 who was the director of the accused no.1/Company claims to have resigned as a director on 15.2,1999, and a resolution accepting his resignation was passed on 17.2.1999 (Ex.159). This position has been admitted by accused no.2, in his cross-examination. The complaint has been instituted on 16.4.1999. In ***Saumil Dilip Mehta*** (supra) relied upon by Mr. Sonak, learned counsel for the applicant/accused no.3, it has been held that resignation of a director comes into force on the date of its acceptance. What is however material to note is that in the instant matter, though the accused no.3/applicant, had resigned as a director of the respondent no.1/Company on 15.02.1999 before the filing of the complaint, and the resolution dated 17.2.1999 (Exh.159) accepted his resignation, the same would in view of what has been held in ***Saumil Dilip Mehta*** (supra) come into force on 17.2.1999, the date of its acceptance, as against which the cheques in question, admittedly have been signed by the accused no.3/applicant as admitted in his cross for the purchase of steel from the complainant/Company. That being the position on record, the accused no.3/applicant, would squarely fall within the meaning of the expression 'drawer of the cheque', and would also be the person incharge of the affairs of the Company as occurring in Section 143(1) of the NI Act as he admits to be one of the two directors of the accused no.1/Company, and further admits that the distribution of work of the accused no.1/Company was

decided by him and the accused no.2 and both of them were ultimately doing the work of accused no.1 (para 14-cross Exh.174/c). The subsequent acceptance of the resignation, before filing of the complaint, and may be even before the cheques were dishonoured, as they are claimed to be so dishonoured on 23.2.1999 and 24.2.1999, would not be of any avail.

That apart, a perusal of the cheques would indicate the following position. All the cheques drawn on Sangli District Central Cooperative Bank Limited, Sangli.

Sr. No.	Cheque No.	Date	Amount	Whether signed by applicant nos.2&3.	Cri. Complaint No.
01.	285157	18.2.1999	2,68,066	Yes	**SCC No. 2830 of 2005** **[Cri. Revn No. 99 of 2021]**
02.	285158	18.2.1999	1,62,289	Yes	
03.	285159	18.2.1999	3,10,329	Yes	
04.	281160	18.2.1999	2,97,289	Yes	
05.	285146	17.2.1999	3,08,398	Yes	
06.	285147	17.2.1999	2,05,759	Yes	
07.	285148	17.2.1999	2,69,273	Yes	
08.	285149	17.2.1999	2,36,672	Yes	
09.	285143	16.2.1999	2,20,732	Yes	

10.	285132	18.10.1998	2,25,562	Yes	
11.	285133	20.10.1998	2,21,939	Yes	
12.	285134	22.10.1998	2,09,141	Yes	

Sr. No.	Cheque No.	Date	Amount	Whether signed by applicant nos.2&3.	Exhibit No.	Cri. Compla-int No.
01.	285152	17.2.1999	3,16,849	Yes	–	**SCC No. 2842 of 2005 [Cri. Revn No. 99 of 2021]6**
02.	285151	17.2.1999	2,54,542	Yes	–	
03.	285150	17.2.1999	2,52,611	Yes	–	
04.	285140	16.2.1999	2,49,713	Yes	–	
05.	285141	16.2.1999	1,68,084	Yes	–	
06.	285142	16.2.1999	2,35,223	Yes	–	
07.	285145	16.2.1999	2,14,453	Yes	–	
08.	285144	16.2.1999	1,84,265	Yes	–	
09.	285135	24.10.1998	3,34,237	Yes	–	

Sr. No.	Cheque No.	Date	Amount	Whether signed by applicant nos.2&3.	Exhibit No.	Cri. Compla-int No.
01.	285155	18.2.1999	2,95,115	--	–	**SCC No. 2831 of 2005[Cri. Revn No. 98 of 2021]**
02.	285156	18.2.1999	2,14,695	--	–	
03.	285154	18.2.1999	3,19,746	--	–	
04.	285153	18.2.1999	3,48,004	--	–	

Sr. No	Cheque No.	Date	Amount	Whether signed by applicant nos.2&3.	Exh No.	Cri. Compla-int No.
01.	285136	26.10.1998	2,35,222	--	--	**SCC No. 2846 of 2005 [Cri. Revn No. 97 of 2021]**
02.	285139	11.02.1999	2,31,116	--	--	

A perusal of the chart above would point out that some of the cheques are dated 16.2.1999, 17.2.1999 and 18.2.1999, all of which have been signed by the applicant/accused no.3. This would clearly indicate that, the story of resignation of the accused no.3 on 15.2.1999 and its acceptance on 17.2.1999 (Exh.159) is clearly an eyewash created to get the accused no.3 out of the liability, for there was no reason whatsoever, for the accused no.3 having tendered his resignation on 15.2.1999, to have continued to sign the cheques even on 18.2.1999, though it is claimed that the resignation had been accepted on 17.2.1999 (Exh.159). I am therefore not able to accept the contention of Mr. Sonak, learned counsel for the accused no.3/applicant that due to his resignation dated 15.2.1999, which is claimed to have been accepted on 17.2.1999, the accused no.3 was not liable to be prosecuted. The contention is therefore rejected.

24. The impugned judgments dated 05.01.2010 passed in Complaint Case Nos. 2830/2005, 2831/2005, 2842/2005 and

2846/2005 by the learned JMFC, Nagpur and judgments dated 31.08.2021 passed in Criminal Appeal Nos. 29/2010, 30/2010, 31/2010 and 32/2010 by the learned District Judge-1, Nagpur, in view of the above discussion, therefore, cannot be sustained on account of absence of authorization to institute and prosecute the complaints and are hereby quashed and set aside and the Complaint Case Nos. 2830/2005, 2831/2005, 2842/2005 and 2846/2005 are hereby dismissed and the original accused no.2-K.G.K. Rao and accused no.3-Shankar V. Maitra are acquitted of the offence under Section 138 of the NI Act.

25. The criminal revision applications are accordingly allowed in the above terms. No costs.

JUDGE

Rvjalit