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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 238 OF 2023

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Shree Richa Realtors, A partnership
firm through its partner Prakash S. Joshi ... Petitioner

V/s.

Nishma Shashin Shah & Anr. ... Respondents

Mr. Rahul Hande for the petitioner.

Mr. Sunil D'Souza for respondent no.1.

Mr. A.R. Patil, APP for respondent no.2/State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 5, 2023

P.C.:

1. An objection is raised to the order dated 26th September 2022 thereby marking documents along with Exhibit 14 at serial nos.2 to 10. The exhibition of power of attorney has been postponed only on the ground that the said copy is not original.

2. The writ petition arise out of proceedings under section 138 of the Negotiable Instruments Act, 1881. The petitioner is original accused. The respondent/complainant examined power of attorney holder of the complainant. In the complaint and in the examination-in-chief, the husband of the complainant states that he was present when the transaction between the complainant and

the accused took place. Based on his personal knowledge, he deposed that the documents in question have been executed in his presence or as per the instructions of the complainant. If this be so, the documents are proved based on personal knowledge of the power of attorney holder who is husband of the complainant. Once the facts stated are within personal knowledge of the power of attorney holder, the statements made by him on oath are admissible in law.

3. Reliance on the judgment in **Rasool Mohammad (Dead) through LRs v. Anees Khan & Ors.** reported in AIR 2022 OnLine MP 491 is misplaced as the said judgment has not considered the binding precedent of the Apex Court in **Janki Vashdeo Bhojwani & Anr. v. Indusind Bank Ltd. & Ors.** reported in AIR 2005 SC 439. In **Janki Bhojwani**, the Apex Court has held that the power of attorney holder is entitled to depose facts within his personal knowledge and such evidence is admissible in law.

4. The next judgment relied by the petitioner is in the case of **Prakash Cotton Mills v. Municipal Commissioner for Greater Bombay & Anr.** reported in AIR 1982 Bom 387. In the facts of the case, the document in question was sale deed. Learned Single Judge of this Court relying on earlier Division Bench held that for proving such document, the author of the document is required to be examined.

5. There can not be dispute about the ratio laid down by the learned Single Judge of this Court. However, as per the provisions

of the Indian Evidence Act, 1872 there are other modes to prove the document and one of it is the person who was present at the time of execution of the document or who is aware of the signature or the contents of the document. In the facts of the case, the complaint has been filed through power of attorney/husband and the husband has made statement in the complaint and in the examination-in-chief that he was personally present at the time of transaction and all relevant times.

6. There is no error in the impugned order. The exercise of discretion by the Court has not resulted in miscarriage of justice.

7. The writ petition, therefore, stands dismissed. No costs.

(AMIT BORKAR, J.)