

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1436 of 2022

Halдар Nettings Private Limited & Anr.

Vs.

West Bengal Industrial Development Corporation Limited.

For the petitioners

: Mr. Biswanath Mitra,
Mr. Triptimoy Talukdar,
Mr. Jyotirmoy Talukdar.

For the Opposite Party

: Mr. T.M. Siddiqui,
Mr. Suddhadev Adak.

Hearing concluded on

: 07.05.2024

Judgment on

: 10.05.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceeding in complaint case no. 24862 of 2013, pending before the Metropolitan Magistrate, 8th Court, at Calcutta.
2. The petitioners' case is that the petitioner no.1 is the Company and Petitioner no. 2 is the Director of the company and both were made as accused no.1 and 3 in Complaint Case No. 24862 of 2013, initiated on the alleged violation of Section 138 of the Negotiable Instrument Act, 1881, presently pending before the Metropolitan Magistrate, 8th Court at Calcutta.
3. The WBIDC Ltd. as complainant, filed the case through Sri Gautam Chakrabarty claiming to be an Officer of the Law Department of WBIDC Ltd.
4. The Petitioners' state and submit that the Complaint on behalf of WBIDC Ltd. was signed by Sri Gautam Chakraborty, in his capacity as Senior Assistant (Law), and also pleaded that he is empowered by the Complainant Company on the basis of a Board Resolution. The Petitioners state that no Copy of the Resolution by the Board of the Complainant Company was filed along with the Complaint to show or prove that Sri Gautam Chakraborty is authorized to sign the Complaint and be examined, under Section 200 of the Code of Criminal Procedure, and

without such authorization, the Learned Court issued summons which is an abuse of the process of law and amounts to injustice.

5. That Sri Gautam Chakraborty authorized representative of the Complainant did not plead and make specific assertion that he has knowledge of the transaction.
6. The authorized representative of the complainant did not say in the initial deposition on affidavit that he witnessed the transaction, as an agent of the payee being WBIDC Ltd and also did not state that he possessed due knowledge regarding the transaction.
7. That in the written initial Deposition on Affidavit, Sri Gautam Chakraborty claiming to be the representative of the Complainant Company, though stated that he is the authorized representative of the Complainant Company, did not file any document to substantiate his statement made on oath. Even in the initial Deposition Sri Gautam Chakraborty did not specify his age.
8. That Sri Gautam Chakraborty has filed the Examination in Chief on Affidavit along with documents, including an Authorization from WBIDC Limited.
9. That Sri Gautam Chakraborty, representing WBIDC Ltd, on oath in his Evidence on Affidavit filed on 28.02.2019, states that he is an employee working as Senior Assistant (Law), and in the Authorization of the Board of Director is stated that Sri Gautam Chakraborty is Deputy Manager

(Law) of WBIDC Ltd and thus contradictory and incorrect and untrue statement on oath, made before the Court of Law.

- 10.** That Sri Gautam Chakraborty in the evidence on Affidavit under Section 45 of the NI Act, 1881, stated that he is 35 years old and such evidence was filed on 28.02.2019 and in Cross examination on 10.03.2022 he stated that he is 56 years old, which amounts to giving false evidence before a Court of Law.
- 11.** That Sri Gautam Chakraborty in cross examination stated that he was Senior Assistant (Law) in the year 2013 and in the Year 2016 he was promoted as Deputy Manager (Law), yet in the Evidence on Affidavit under Section 145 of the NI Act 1881 filed on 28.02.2019, he states that he is working as Senior Assistant (Law), and as such made incorrect and false statement before the Learned Trial Court.
- 12.** That the notice dated 26.06.2013 given by the Complainant which was produced and taken for record and marked exhibit 4 was authored by Sri Debasis Konar, in his capacity as Deputy General Manager (Law), but Sri Gautam Chakraborty in his examination in Chief on 28.02.2019 stated that demand notice was sent by their Learned Advocate Sri Debasis Konar, which is an incorrect and false statement before the Court of Law.
- 13.** Sri Gautam Chakraborty, authorized representative of the Complainant, in his evidence on Affidavit, in terms of Section 145 of the NI Act 1881, stated at paragraph 9, that the accused persons sent a reply to the notice taking vague grounds for nonpayment of the dues, and such reply dated

10.07.2013 was tendered in evidence and marked as Exhibit 6, and in cross examination on 01.08.2019, he said that the contents of Exhibit 6 are correct and thus made contradictory statements and also proves that the statement made in paragraph 9 of the evidence on Affidavit, filed under Section 145 of the NI ACT 1881 is false.

- 14.** The petitioners state that a Petition was filed before the Learned Trial Court for expunging the evidence of Sri Gautam Chakraborty on the grounds that in the evidence on Affidavit, there is no clear assertion that Sri Gautam Chakraborty has personal knowledge of the transaction and also on the ground that evidence on Affidavit filed under Section 145 of the N.I. Act 1881 is not accompanied by a statement as to which paragraph are true to his knowledge. In support of the petition filed on 16.04.2021 a reported Judgment of the Hon'ble Supreme Court was cited and relied.
- 15.** That Sri Gautam Chakraborty, in the Affidavit in Chief mentioned that the cheque was deposited at Bank of Maharashtra for clearance, but from the Evidence in Affidavit, Exhibit 3 and 3/1 being the cheque return memo of IDBI bank and computer generated advice of HDFC Bank Limited, the Cheque was deposited with HDFC Bank limited and not Bank of Maharashtra, and thus Sri Gautam Chakraborty incorrect and false statement/evidence before the Learned Trial Court. The Learned Trial Court till date of affirming this application did not take any steps for initiating case of giving false evidence, in an appropriate Court of Law.

16. The Petitioners submits that the Hon'ble Supreme Court in a judgment held that Power of Attorney holder can depose if he is a witness to the transaction as an agent of the payee and also must make specific assertion of the same in the complaint, and further held that a Power of Attorney holder, who has no knowledge regarding the transaction cannot be examined as a witness in the case.
17. That the case was filed in the year 2013 and the authorization being Resolution of the Board of Directors of WBIDC Ltd was taken at a meeting held on 03.02.2016, but in the Complaint at paragraph 2, Sri Gautam Chakraborty pleaded that he is empowered by a Board Resolution, which by itself an incorrect and untrue statement. Even in the Extract of the Resolution of the Board of the Complaint Company Case number has not been mentioned.
18. Being aggrieved and highly dissatisfied with the continuation of an illegal and incurable criminal proceedings being Complaint Case No. 24862 of 2013 and also with the order dated 07.12.2021 passed by the learned Metropolitan Magistrate, 8th Court, at Calcutta, in Complaint Case No. 24862 of 2013, the petitioners have preferred this revisional application praying for quashing of the said proceedings.
19. The complainant/opposite party is duly represented.
20. The petitioners herein have relied upon the judgment of the Supreme Court in ***A.C. Narayanan Vs State of Maharashtra & Anr. (AIR 2014***

SC 630) and have also submitted a written notes of argument. In the said judgment the Court held:-

“9) In view of the above, learned senior counsel for the appellant relied on a decision of this Court in Janki Vashdeo Bhojwani (supra) wherein this Court held that Power of Attorney cannot depose for the acts done by the principal. Likewise, it was further held that he cannot depose for principal in respect of matters of which only the principal can have personal knowledge and in respect of which the principal is liable to be cross-examined. It was further held that the Power of Attorney can appear only as a witness in respect of facts, which are within his personal knowledge.

12) Learned senior counsel for the appellant further contended that the object of such examination is to ascertain whether there is a prima facie case against the accused of the commission of an offence as mentioned in the complaint and also to prevent the issuance of a process on a complaint which is either false or vexatious or intended to harass a person.

15) In terms of the reference order, the following questions have to be decided by this Bench:

(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 NI 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?

18) Now, let us consider the later decision of this Court in *Janki Vashdeo Bhojwani (supra)*. This case relates to powers of Power of Attorney under the Code of Civil Procedure, 1908 and it was concluded that a complaint by a power of attorney holder on behalf of original plaintiff is maintainable provided he has personal knowledge of the transaction in question. This Court further held as under:

“12. In the context of the directions given by this Court, shifting the burden of proving on to the appellants that they have a share in the property, it was obligatory on the appellants to have entered the box and discharged the burden by themselves. The question whether the appellants have any independent source of income and have contributed towards the purchase of the property from their own independent income can be only answered by the appellants themselves and not by a mere holder of power of attorney from them. The power-of-attorney holder does not have personal knowledge of the matter of the appellants and therefore he can neither depose on his personal knowledge nor can he be cross-examined on those facts which are to the personal knowledge of the principal.

13. Order 3 Rules 1 and 2 CPC empower the holder of power of attorney to “act” on behalf of the principal. In our view the word “acts” employed in Order 3 Rules 1 and 2 CPC confines only to in respect of “acts” done by the power-of-attorney holder in exercise of power granted by the instrument. The term “acts” would not include deposing in place and instead of the principal. In other words, if the power-of-attorney holder has rendered some “acts” in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.”

This Court further held thus:

*“17. On the question of power of attorney, the High Courts have divergent views. In the case of *Shambhu Dutt Shastri v. State of**

Rajasthan it was held that a general power-of-attorney holder can appear, plead and act on behalf of the party but he cannot become a witness on behalf of the party. He can only appear in his own capacity. No one can delegate the power to appear in the witness box on behalf of himself. To appear in a witness box is altogether a different act. A general power-of-attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the capacity of the plaintiff.

18. The aforesaid judgment was quoted with approval in the case of Ram Prasad v. Hari Narain. It was held that the word “acts” used in Rule 2 of Order 3 CPC does not include the act of power-of-attorney holder to appear as a witness on behalf of a party. Power-of-attorney holder of a party can appear only as a witness in his personal capacity and whatever knowledge he has about the case he can state on oath but he cannot appear as a witness on behalf of the party in the capacity of that party. If the plaintiff is unable to appear in the court, a commission for recording his evidence may be issued under the relevant provisions of CPC.

19. In the case of Pradeep Mohanbay (Dr.) v. Minguel Carlos Dias the Goa Bench of the Bombay High Court held that a power of attorney can file a complaint under Section 138 but cannot depose on behalf of the complainant. He can only appear as a witness.

20. However, in the case of Humberto Luis v. Floriano Armando Luis on which reliance has been placed by the Tribunal in the present case, the High Court took a dissenting view and held that the provisions contained in Order 3 Rule 2 CPC cannot be construed to disentitle the power-of-attorney holder to depose on behalf of his principal. The High Court further held that the word “act” appearing in Order 3 Rule 2 CPC takes within its sweep “depose”. We are unable to agree with this view taken by the Bombay High Court in Floriano Armando.

21. We hold that the view taken by the Rajasthan High Court in the case of Shambhu Dutt Shastri followed and reiterated in the case of Ram Prasad is the correct view. The view taken in the case of Floriano Armando Luis cannot be said to have laid down a correct law and is accordingly overruled.”

20) *The stand of the appellant in Criminal Appeal No. 73 of 2007 is that no complaint can be filed and no cognizance of the complaint can be taken if the complaint is by the power of attorney holder, since it is against Section 200 of the Code and*

deserves to be rejected. There is no dispute that complaint has to be filed by the complainant as contemplated by Section 200 of the Code, but the said Section does not create any embargo that the attorney holder or legal representative(s) cannot be a complainant.

21) *The power of attorney holder is the agent of the grantor. When the grantor authorizes the attorney holder to initiate legal proceedings and the attorney holder accordingly initiates such legal proceedings, he does so as the agent of the grantor and the initiation is by the grantor represented by his attorney holder and not by the attorney holder in his personal capacity. Therefore, where the payee is a proprietary concern, the complaint can be filed by the proprietor of the proprietary concern, describing himself as the sole proprietor of the payee, the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor, and the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor. However, we make it clear that the power of attorney holder cannot file a complaint in his own name as if he was the complainant. In other words, he can initiate criminal proceedings on behalf of the principal.*

22) *From a conjoint reading of Sections 138, 142 and 145 of the N.I. Act as well as Section 200 of the Code, it is clear that it is open to the Magistrate to issue process on the basis of the contents of the complaint, documents in support thereof and the affidavit submitted by the complainant in support of the complaint. Once the complainant files an affidavit in support of the complaint before issuance of the process under Section 200 of the Code, it is thereafter open to the Magistrate, if he thinks fit, to call upon the complainant to remain present and to examine him as to the facts contained in the affidavit submitted by the complainant in support of his complaint. However, it is a matter of discretion and the Magistrate is not bound to call upon the complainant to remain present before the Court and to examine him upon oath for taking decision whether or not to issue process on the complaint under Section 138 of the N.I. Act. For the purpose of issuing process under Section 200 of the Code, 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. It is only if and where the Magistrate, after considering the complaint under Section 138 of the N.I. Act, documents produced in support thereof and the verification in the form of affidavit of*

the complainant, is of the view that examination of the complainant or his witness(s) is required, the Magistrate may call upon the complainant to remain present before the Court and examine the complainant and/or his witness upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the N.I. Act.

23) In the light of the discussion, we are of the view that the power of attorney holder may be allowed to file, appear and depose for the purpose of issue of process for the offence punishable under Section 138 of the N.I. Act. An exception to the above is when the power of attorney holder of the complainant does not have a personal knowledge about the transactions then he cannot be examined. However, where the attorney holder of the complainant is in charge of the business of the complainant-payee and the attorney holder alone is personally aware of the transactions, there is no reason why the attorney holder cannot depose as a witness. Nevertheless, an explicit assertion as to the knowledge of the Power of Attorney holder about the transaction in question must be specified in the complaint. On this count, the fourth question becomes infructuous.

24) In view of the discussion, we are of the opinion that the attorney holder cannot file a complaint in his own name as if he was the complainant, but he can initiate criminal proceedings on behalf of his principal. We also reiterate that where the payee is a proprietary concern, the complaint can be filed (i) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the “payee”; (ii) the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (iii) the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor.

25) Similar substantial questions were raised in the appeal arising out of S.L.P (Crl.) No. 2724 of 2008, which stand answered as above. Apart from the above questions, one distinct query was raised as to whether a person authorized by a Company or Statute or Institution can delegate powers to their subordinate/others for filing a criminal complaint? The issue raised is in reference to validity of sub-delegation of functions of the power of attorney. We have already clarified to the extent that the attorney holder can sign and file a complaint on behalf

of the complainant-payee. However, whether the power of attorney holder will have the power to further delegate the functions to another person will completely depend on the terms of the general power of attorney. As a result, the authority to sub- delegate the functions must be explicitly mentioned in the general power of attorney. Otherwise, the sub-delegation will be inconsistent with the general power of attorney and thereby will be invalid in law. Nevertheless, the general power of attorney itself can be cancelled and be given to another person.

26) While holding that there is no serious conflict between the decisions in MMTC (supra) and Janki Vashdeo Bhojwani (supra), we clarify the position and answer the questions in the following manner:

(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 witnessed 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.”

21. From the materials on record, it is evident that:-

- i) The Complainant in this case is a Government Company.
- ii) The Complainant is being represented by its representative, the Sr. Assistant (Law) of the Company being duly empowered by virtue of a resolution (copy at page 27) of the Board of the Company, when he was holding the post of Deputy Manager (Law).
- iii) In his deposition under Section 200 Cr.P.C. on affidavit, the authorized representative of the Company has stated **that being well conversant with the facts and circumstances of the case, he has filed the instant case** against the accused persons/petitioners herein.
- iv) In his deposition under Section 145 N.I. Act (Paragraph 3) the authorized representative of the Complainant Company has stated on oath that **“he is well acquainted to the facts and circumstances of the present case and also aware of the papers and documents related to the case”** (explicit).
- v) The said material on record does not support the statement of the petitioners herein, that “there is no clear assertion, that the complainant has personal knowledge of the transaction.
- vi) The petitioners have relied upon the judgment of the Supreme Court in ***A.C. Narayanan Vs State of Maharashtra & Anr. (Supra)*** stating that in view of the said judgment, the authorized representative cannot be

examined or be a witness, as an authorized person can be said to be an attorney.

22. The order under revision is as follows:-

“C-24862/2013

Order dated 07.12.2021

Today is fixed for hearing dated 16.04.2024.

Both parties are present along with their Ld. Advocate.

Ld. Advocate for the accused filed this petition praying for expunging the evidence of PW1 Gautam Chakraborty stating that there is no verification in affidavit-in-chief filed u/s 138 N.I. Act and also there is no clear assertion, that the complainant had personal knowledge about the transaction.

Hence, prayed for an order expunging the evidence of Gautam Chakraborty.

Ld. Advocate for the complainant raised objections to the petition stating that the complainant has complied the affidavit filed u/s 145 N.I. Act and that Power of Attorney holder has every right to depose if he has been duly authorized.

Heard. Considered.

The Ld. Advocate for the accused has relied on a judgment reported in AIR 2014 SC 630 wherein the Hon'ble Court is of the view that Power of Attorney holder may be allowed to file, appear and depose for the purpose of issue of process for the offence punishable N.I. Act. Filing of complaint petition u/s 138 N.I. Act is perfectly legal and competent. The power of attorney holder is the agent of grantor when the grantor authorizes the attorney holder to initiate legal proceeding and the attorney holder accordingly initiates such legal proceedings he does so as the agent granted and the initiation is by the grantor represented by his attorney holder. In exception to the above, is when the power of attorney holder of the complainant does not have a personal knowledge about the transaction then he cannot be examined. However, where the attorney holder of the complainant is in charge of the business of the complainant payee and the attorney holder is personally aware of the transaction there is no reason why the attorney holder cannot depose as a witness.

The complainant herein is in Govt. of West Bengal duly represented by the law officer having knowledge of the transaction. Therefore, he is competent and they authorize to depose on behalf of the company and secondly, he has already filed an affidavit u/s 145 N.I. Act verification is not mandatory.

As regard to the question of expunging the evidence, there is no provision to do so. Hence, petition filed by the accused is considered and rejected.

D/C by me

Sd/-
Metropolitan Magistrate
8th Court, Calcutta”

23. The Judgment in *A.C. Narayanan Vs State of Maharashtra & Anr.*

(Supra) is in respect of a power of attorney holder, which is not the case in the present proceeding.

In the said judgment, the Court further held:-

“21) *The power of attorney holder is the agent of the grantor. When the grantor authorizes the attorney holder to initiate legal proceedings and the attorney holder accordingly initiates such legal proceedings, he does so as the agent of the grantor and the initiation is by the grantor represented by his attorney holder and not by the attorney holder in his personal capacity. Therefore, where the payee is a proprietary concern, the complaint can be filed by the proprietor of the proprietary concern, describing himself as the sole proprietor of the payee, the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor, and the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor. However, we make it clear that the power of attorney holder cannot file a complaint in his own name as if he was the complainant. In other words, he can initiate criminal proceedings on behalf of the principal.*

24) *In view of the discussion, we are of the opinion that the attorney holder cannot file a complaint in his own name as if he was the complainant, but he can initiate criminal proceedings on behalf of his principal. We also reiterate that where the payee is a proprietary concern, the complaint can be filed (i) by*

the proprietor of the proprietary concern, describing himself as the sole proprietor of the “payee”; (ii) the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (iii) the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor.

(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.”

24. Thus in the present case, an authorized representative of the Complainant Company has initiated the present proceedings being duly authorized to do so, having (explicit) knowledge of the facts and circumstances of the case and also the papers and documents related to the case.

25. Accordingly the order under revision being in accordance with law requires no interference.

26. CRR 1436 of 2022 is thus dismissed.

27. The order dated 07.12.2021, in complaint case no. 24862 of 2013, passed by the Metropolitan Magistrate, 8th Court, at Calcutta **is hereby affirmed.**

28. Trial Court to proceed with the trial, in accordance with law.

29. All connected applications, if any, stand disposed of.

30. Interim order, if any, stands vacated.

31. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

- 32.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)