

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 232 of 2008

**Ing Vysya Bank Limited (Kotak Mahindra Bank Ltd.)
-Vs-
The State of West Bengal & Ors.**

For the Appellant : Mr. D. Mitra
Mr. Debajyoti Deb
Ms. Somdyuti Parekh

For the Opposite Party Nos. 2 & 3 : Mr. Sourav Chatterjee

Heard on :13.09.2023, 03.01.2024, 05.01.2024,
08.01.2024

Judgment on :14.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order of acquittal dated 20.12.2007 passed by the Learned Metropolitan Magistrate, 13th Court at Calcutta in Case No. C/7873/05 under Sections 138/141 of Negotiable Instruments Act, 1881 which was pending before the Learned Metropolitan Magistrate, 13th Court, Calcutta whereby acquitted the opposite party no. 2 from the charges punishable under Sections 138/141 of Negotiable Instruments Act, 1881.
2. The appellant stated that the complaint being Case No. C/7873/05 was filed on behalf of the said company through its authorized representative and

constituted attorney Asim Dasgupta on 19.08.2005 before the Learned Metropolitan Magistrate, 13th Court at Calcutta against the opposite parties no. 2 and 3 being the partnership firm and one of the partners of the firm respectively.

3. The appellant stated that the Learned Chief Judicial Magistrate was pleased to take cognizance of the offences and was pleased to transfer the case before the Learned Metropolitan Magistrate, 13th Court, Calcutta for trial and disposal. During the process of trial, the appellant filed an affidavit under Section 145 of Negotiable Instruments Act whereupon the Learned Metropolitan Magistrate, 13th Court, Calcutta was pleased to issue summon against the accused persons. The accused person then appeared and was examined under Section 251 of Cr.P.C. while the accused person pleaded “not guilty” and claimed to be tried. The appellant then filed Affidavit-in-Evidence annexing all the relevant documents.
4. The appellant stated that the prosecution examined one witness and accepted all the relevant documents.
5. The appellant stated that since the appellant did not feel it expedient to examine any more witness because of relevant documents were accepted as exhibits and no witness from the accused bank was called for evidence because of the reason as it was not mandatory under Section 146 of Negotiable Instruments Act.
6. The original power of attorney granted on behalf of the complainant bank being the singular copy was not exhibited in the case but a copy of the said

power of attorney was filed alongwith the complaint and submitted that samewould be produced if so required anytime.

7. The appellant stated after evidence, the accused persons was examined under Section 313 of Cr.P.C., whereupon, the opposite party no. 3 did not state anything which was contradictory to the merit of the case. The appellant craves leave of this Learned Court to refer to the copy of the examination under Section 313 of Cr.P.C. at the time of hearing of this application, if necessary.
8. The appellants stated that after evidence and examination under Section 313 of Cr.P.C. were completed, arguments were advanced on behalf of the respective parties and finally on conclusion of the trial, the impugned order and judgment dated 20.12.2007 was delivered whereupon the Learned Metropolitan Magistrate, 13th Court, Calcutta was pleased to pass an order acquitting the opposite parties no. 2 & 3 from the offence under Sections 138/141 of Negotiable Instruments Act and further directed that the opposite party no. 2 & 3 to be discharged from the bail petition.
9. The Learned Advocate for the appellant submitted that:-
 - i. The Trial Court below passed an order of acquittal primarily on two-fold grounds-
 - a. The complainant, being the authorized representative of the bank did not file the original power of attorney in the proceedings.
 - b. The bank return memo (marked as exhibit 2) did not bear the official seal of the concerned bank.

ii. In the petition of complaint under Section 138 of the Act of 1881, the complainant had specifically mentioned in paragraph 1 of the application that he was the authorized representative and constituted attorney of the bank and along with the petition of complaint. In course of trial the accused/opposite parties never denied that the appellant was not the authorized representative of the bank. Mere non-filing of the original power of attorney could never have vitiated the trial. Original power of attorney was generally kept with the bank and a photocopy was used in multiple proceedings in various courts of law wherein the bank was frequently required to initiate proceedings against defaulters.

iii. The decision of the Hon'ble High Court of Jammu and Kashmir and Ladakh at Srinagar passed in CRM(M) No. 88/2020 was relied upon wherein the Hon'ble Court had specifically held in paragraph 12 that production of original power of attorney would not be necessary.

iv. A bank return memo was simply an official document issued by the concerned bank which discloses the reasons for dishonor of cheque. The accused/opposite parties did not raise any doubt as regards the veracity of the documents. It was a mere technical fault on part of the bank in failing to put the official stamp on the memo. Hence, non-stamping on a bank return memo (which was marked as exhibit – 2) would not vitiate the trial.

v. The decision of the Hon'ble High Court of Delhi passed in CRL.MC. 4100/2011 & CRL.M.A. 16919/2022 was relied upon wherein the Court

held in Paragraph 9 that if the cheque return memo was not bearing official stamp of the bank, it does not render the cheque return memo as invalid or illegal.

vi. The decision of the Apex Court reported in (2008) 8 SCC 536 in *Shankar Finance And Investment Vs. State of Andhra Pradesh and Ors.* The Apex Court was relied upon having laid down the requirements for taking cognizance of a complaint in Paragraph 9 of the said judgment. The Learned Advocate for the appellant also relied on Paragraph 11 and 16 of the said judgment.

vii. The appellant also relies on the decision of the Hon'ble Apex Court reported in (2006) 1 SCC 75 in *Uday Shankar Triyar Vs. Ram Kaleshwar Prasad Singh and Anr.* wherein the Hon'ble Apex Court was relied upon wherein it was specifically held that non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief sought should not entail automatic dismissal and rejection unless the relevant statute so mandates.

viii. It was further submitted that the Act of 1881 did not specify that an original power of attorney had to be brought on record wherein a photocopy of the same was placed on record right from the very outset by the authorized representative of the complainant bank.

ix. Moreover, mere non-stamping of the bank return memo by the issuing bank being a minor flaw would not vitiate the trial.

10. The Learned Advocate for the appellant relied on the following judgments: -

a. The Hon'ble High Court of Jammu & Kashmir and Ladakh at Srinagar

held the following in **A.B. Rasheed Bhat vs. HDFC Bank LTD.**¹:-

“12. From the aforesaid analysis of law on the subject, it is clear that in a case where the complainant is a company, an authorized employee can represent the said company. Once an averment to this effect is made in the complaint, it is sufficient for the Magistrate to take cognizance and issue process. It also emerges that in case authority of a person filing complaint on behalf of the company is disputed by the accused, the same would be a matter of trial to be decided during the course of trial and it would not be a ground to dismiss the complaint at the threshold itself. The ratio laid down in these judgments has not been taken note of either by Delhi High Court or by Madras High Court in the judgments relied upon by the petitioner. Thus, the ratio laid down in these judgments to the effect that production of original Power of Attorney is necessary at the time of taking cognizance of the complaint under Section 138 of NI Act, is not the correct position of law.”

b. The Hon'ble High Court of Delhi in **Guneet Bhasin vs. State of NCT of**

Delhi & Anr. and Ors.² held the following:-

“9. The cheque return memo is a memo informing the payee's banker and the payee about the dishonour of a cheque. When the cheque is dishonoured, the drawee bank immediately issues a cheque return memo to the payee's banker mentioning the reason for non-payment. The purpose of the cheque return memo is to give the information of the holder of the cheque that his cheque on presentation could not be encashed due to the variety of reasons as mentioned in the cheque return memo. As per the section 146 of the NI act, the cheque return memo on presentation presumed the fact of dishonour of the cheque unless and until such fact is disapproved.

¹CRM(M) No. 88/2020

²CRL.M.C. 4100/2022 & CRL.M.A. 16919/2022(Stay)

Neither section 138 nor the section 146 of the NI act has prescribed any particular form of cheque return memo. The section 138 of the NI Act does not mandate any particular form of cheque return memo which is nothing but a mere information given by the Banker of the due holder of a cheque that the cheque has been returned as unpaid. If the cheque return memo is not bearing any official stamp of the bank, it does not render the cheque return memo as invalid or illegal. The cheque return memo is not a document which is not required to be covered under section 4 of the Bankers Book (Evidence) Act, 1891. If there is any infirmity in the cheque return memo, it does not render entire trial under section 138 of the NI Act as nullity.”

- c. The Hon’ble Supreme Court in **Shankar Finance & Investments v. State of A.P.**³ held the following:-

“9. Section 142(a) of the Act requires that no court shall take cognizance of any offence punishable under Section 138 except upon a complaint made in writing by the payee. Thus the two requirements are that (a) the complaint should be made in writing (in contradistinction from an oral complaint); and (b) the complainant should be the payee (or the holder in due course, where the payee has endorsed the cheque in favour of someone else). The payee, as noticed above, is M/s Shankar Finance & Investments. Once the complaint is in the name of the “payee” and is in writing, the requirements of Section 142 are fulfilled. Who should represent the payee where the payee is a company, or how the payee should be represented where payee is a sole proprietary concern, is not a matter that is governed by Section 142, but by the general law.

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11. The next question is where a proprietary concern carries on business through an attorney holder, whether the attorney holder can lodge the complaint? The attorney holder is the agent of the

³(2008) 8 SCC 536

grantor. When the grantor authorises the attorney holder to initiate legal proceedings and the attorney holder accordingly initiates 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: (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. It follows that in this case the complaint could have been validly filed by describing the complainant in any one of the following four methods:

“Atmakuri Shankara Rao, sole proprietor of M/s Shankar Finance & Investments”

or

“M/s Shankar Finance & Investments, a sole proprietary concern represented by its proprietor Atmakuri Shankara Rao”

or

“Atmakuri Shankara Rao, sole proprietor of M/s Shankar Finance & Investments, represented by his attorney holder Thamada Satyanarayana”

or

“M/s Shankar Finance & Investments, a proprietary concern of Atmakuri Shankara Rao, represented by his attorney holder Thamada Satyanarayana”.

What would have been improper is for the attorney holder Thamada Satyanarayana to file the complaint in his own name as if he was the complainant.

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16. *In regard to business transactions of companies, partnerships or proprietary concerns, many a time the authorised agent or attorney holder may be the only person having personal knowledge of the particular transaction; and if the authorised agent or attorney holder has signed the complaint, it will be absurd to say that he should not be examined under Section 200 of the Code, and only the secretary of the company or the partner of the firm or the proprietor of a concern, who did not have personal knowledge of the transaction, should be examined. Of course, where the cheque is drawn in the name of the proprietor of a proprietary concern, but an employee of such concern (who is not an attorney holder) has knowledge of the transaction, the payee as complainant and the employee who has knowledge of the transaction, may both have to be examined. Be that as it may. In this case we find no infirmity.”*

d. The Hon’ble Supreme Court held the following in **Uday Shankar Triyar v. Ram Kalewar Prasad Singh**⁴.

“17. *Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:*

- (i) where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;*
- (ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;*

⁴(2006) 1 SCC 75

(iii) where the non-compliance or violation is proved to be deliberate or mischievous;

(iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;

(v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant.”

11. The Learned Advocate for the opposite party submitted that in compliance with the provisions of Sections 62 to 65 of the Indian Evidence Act, the original power of attorney conferred on the complainant to institute the complaint case and represent the same was not filed neither was it exhibited.

12. The Learned Advocate for the opposite party further submitted that the provisions of Section 142(1)(a) of N.I. Act, the payee was the Ing Vysya Bank Limited who delegated the power to Mr. Asim Dasgupta to institute the case who had to fulfill the parameter as enumerated in Paragraph - 33.3 of the decision cited in **A.C. Narayanan Vs. State of Maharashtra &Anr.**⁵, where it is stated “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”.

13. It was further submitted that the power of attorney holder did not mention to have possessed the knowledge with regard to the subject matter of the complaint. Moreover, the complaint filed before the Court of Learned Chief

⁵(2014) 11 SCC 790

Metropolitan Magistrate, Calcutta mentioned the name of the present petitioner to be Asim Dasgupta which otherwise should have been the Ing Vysya Bank Limited.

14. The conditions as mentioned in Section 142(1)(a) of the N.I. Act had not been complied with. Moreover, the original power of attorney had not been filed by the complainant namely Asim Dasgupta and his knowledge about the dispute was not averred in the complaint and accordingly the Learned Trial Court was justified in acquitting the opposite parties.

15. The Learned Advocate for opposite party no. 2 and 3 relied on the following cases:-

a. The Hon'ble Supreme Court in **A.C. Narayanan v. State of Maharashtra**⁶ held the following:-

“33.3. 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.”

b. In **C. Antony v. K.G. Raghavan Nair**⁷, the Hon'ble Supreme Court held the following:-

“5. We have heard learned counsel for the parties as also perused the evidence as well as the judgments of the two courts below. From the judgment of the trial court, we notice that the learned Magistrate has given cogent reasons for not accepting the evidence led on behalf of the respondent and on that basis he came to the conclusion that the respondent complainant has not established his case. While

⁶(2014) 11 SCC 790

⁷(2003) 1 SCC 1

the High Court on reappreciation of the evidence, has come to a different conclusion on entirely new grounds without considering the material considered by the trial court and as held above, convicted the appellant. While doing so, the High Court had lost sight of the fact that it was sitting as an appellate court against a judgment of acquittal passed by the trial court, therefore, there was an obligation on the part of the High Court to come to a definite conclusion that the findings of the trial court are either perverse or the same are contrary to the material on record because the High Court could not have substituted its finding merely because another contrary opinion was possible based on the material on record. It was the duty of the High Court to have first come to the conclusion that the conclusions arrived at by the trial court for good reasons are either unreasonable or as stated above, contrary to the material on record. In the absence of any such finding in our opinion, the High Court was in error in taking a contra-view merely because another view was possible on the material on record.

6. *This Court in a number of cases has held that though the appellate court has full power to review the evidence upon which the order of acquittal is founded, still while exercising such an appellate power in a case of acquittal, the appellate court, should not only consider every matter on record having a bearing on the question of fact and the reasons given by the courts below in support of its order of acquittal, it must express its reasons in the judgment which led it to hold that the acquittal is not justified. In those line of cases this Court has also held that the appellate court must also bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal, and in such cases if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court. (See Bhim Singh Rup Singh v. State of Maharashtra [(1974) 3 SCC*

762 : 1974 SCC (Cri) 238] and *Dharamdeo Singh v. State of Bihar* [(1976) 1 SCC 610 : 1976 SCC (Cri) 108] .)”

c. In ***Arulvelu v. State***⁸, the Hon’ble Supreme Court held the following:-

“24. The expression “perverse” has been dealt with in a number of cases. In Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501] this Court observed that the expression “perverse” means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.

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36. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law.

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40. Unquestionably, the appellate court has power to review and reappreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be a perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallised by the aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is

⁸(2009) 10 SCC 206

innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court.”

d. The following was observed by the Hon’ble Supreme Court in **Bhim Singh v. State of Haryana**⁹,

“9. Before concluding, we would like to point out that this Court in a number of cases has held that an appellate court entertaining an appeal from the judgment of acquittal by the trial court though entitled to reappreciate the evidence and come to an independent conclusion, it should not do so as a matter of routine. In other words, if from the same set of evidence two views are possible and if the trial court has taken one view on the said evidence, unless the appellate court comes to the conclusion that the view taken by the trial court is either perverse or such that no reasonable person could come to that conclusion or that such a finding of the trial court is not based on any material on record, it should not merely because another conclusion is possible reverse the finding of the trial court. (See: Mohanlal Hargovind Dass v. Ram Narain [(1979) 3 SCC 279 : 1979 SCC (Cri) 649] , State of Punjab v. Balraj Singh [(1978) 3 SCC 129 : 1978 SCC (Cri) 359] , State of Maharashtra v. Wasudeo Ramchandra Kaidalwar [(1981) 3 SCC 199 : 1981 SCC (Cri) 690] and Ram Kumar Pandey v. State of M.P. [(1975) 3 SCC 815 : 1975 SCC (Cri) 225]) In the instant case also we find that the trial court had taken a view which the High Court has not held to be either perverse, unreasonable or a finding which is not based on evidence, still on reappreciation of the evidence, the High Court came to a different conclusion which on facts of this case and on the basis of the ratio of the law laid down by this Court in the above cited cases cannot be sustained.”

⁹(2002) 10 SCC 461

e. In **State of U.P. v. Awdhesh**¹⁰, the Hon'ble Supreme Court held the following:-

“12. In the present case, though the judgment is not happily worded and some of the reasonings are not legally supportable but the ultimate conclusion is a possible view. That being so, we decline to interfere in this appeal which is dismissed. The bail bond executed in the present case by the respondent shall stand discharged.”

f. The Hon'ble Supreme Court in **Rathinam v. State of T.N.**¹¹ observed the following:-

“30. It is now beyond dispute that interference in such an appeal should be made sparingly in a situation where the findings of the High Court are perverse and not possible on the evidence and if two views are possible, the one leading to acquittal should not be disturbed. The presumption of innocence which is always raised in favour of an accused is further strengthened by an acquittal and bolsters the claim of the accused. The aforesaid time-honoured principles have been recently set out in the judgment of this Court in Arulvelu v. State [(2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] . It is in this background that the facts of the case now need to be examined.”

g. The following was observed by the Hon'ble Supreme Court in **Jayaswamy v. State of Karnataka**¹²:-

“13. It is by now well settled that the appellate court hearing the appeal filed against the judgment and order of acquittal will not overrule or otherwise disturb the trial court's acquittal if the appellate court does not find substantial and compelling reasons for doing so. If the trial court's conclusion with regard to the facts is palpably wrong; if the trial court's decision was based on erroneous

¹⁰(2008) 16 SCC 238

¹¹(2011) 11 SCC 140

¹²(2018) 7 SCC 219

view of law; if the trial court's judgment is likely to result in grave miscarriage of justice; if the entire approach of the trial court in dealing with the evidence was patently illegal; if the trial court judgment was manifestly unjust and unreasonable; and if the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of the ballistic expert, etc. the same may be construed as substantial and compelling reasons and the first appellate court may interfere in the order of acquittal. However, if the view taken by the trial court while acquitting the accused is one of the possible views under the facts and circumstances of the case, the appellate court generally will not interfere with the order of acquittal particularly in the absence of the aforementioned factors.”

h. In **Bannareddy v. State of Karnataka**¹³ the following was held by the Hon'ble Supreme Court:-

“10. Before we proceed further to peruse the finding of the High Court, it is relevant to discuss the power and jurisdiction of the High Court while interfering in an appeal against acquittal. It is well-settled principle of law that the High Court should not interfere in the well-reasoned order of the trial court which has been arrived at after proper appreciation of the evidence. The High Court should give due regard to the findings and the conclusions reached by the trial court unless strong and compelling reasons exist in the evidence itself which can dislodge the findings itself. This principle has further been elucidated in Sambhaji Hindurao Deshmukh v. State of Maharashtra [Sambhaji Hindurao Deshmukh v. State of Maharashtra, (2008) 11 SCC 186 : (2009) 2 SCC (Cri) 464] , SCC para 13, wherein this Court observed that: (SCC pp. 190-91)

“13. ... The High Court will interfere in appeals against acquittals, only where the trial court makes wrong assumptions of material

¹³(2018) 5 SCC 790

facts or fails to appreciate the evidence properly. If two views are reasonably possible from the evidence on record, one favouring the accused and one against the accused, the High Court is not expected to reverse the acquittal merely because it would have taken the view against the accused had it tried the case. The very fact that two views are possible makes it clear that the prosecution has not proved the guilt of the accused beyond reasonable doubt and consequently the accused is entitled to benefit of doubt....”

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25. *In the present case, when the facts as to the incident and the role of the accused could not be proved beyond reasonable doubt, whether the motive behind the same is dispute regarding boundary wall or political rivalry becomes irrelevant.*

26. *Keeping in view the facts and circumstances of the case, we hold that the prosecution was not able to establish the guilt of the accused persons beyond reasonable doubt. Further, the High Court should not have reappreciated the evidence in its entirety, especially when there existed no grave infirmity in the findings of the trial court. There exists no justification behind setting aside the order of acquittal passed by the trial court, especially when the prosecution case suffers from several contradictions and infirmities. No specific assertion could be proved regarding the role and involvement of the accused persons. Further, certain actions of the respondent victims themselves are dubious, for instance admitting themselves later in a multispeciality hospital without proper cause. It has further come to our notice that the respondents have already compromised and have executed a compromise deed to that extent, though the same is not the basis for our conclusion.”*

16. A circumspection of the prosecution witnesses revealed as follows:

- i. PW-1 Sri Asim Dasgupta stated that he had filed examination-in-chief u/s 145 of N.I. Act and he signed on it. He had filed cheque no.

087926 date 08.04.05, 087927 dated 08.04.05 and 087929 dated 08.06.05 of Rs.11,148/- each. There are marked Ext.-1 (series), he had filed return memo dated 06.07.05. It was marked Ext.-2 (with objection). He had filed copy of demand notice dated 18.07.05. It was marked Ext.-3. He had field two postal receipts. There are marked Ext.-4 (series). He had filed two A/D card. There are marked Ext.-5 (series). The complaint petition was marked as Ext.-6.

- ii. In cross-examination PW-1 stated that he was an Accountant and scale and Assistant Manager of the complainant company. Complainant Company was a limited company. Their bank name has been listed in Stock Exchange. It was count that if any Ltd. Company want to authorize Somen Roy (Sic) it has to pass board resolution pass by Board of Directors. He had not filed the original power of Atony. Not a fact that he had not been authorized by the complainant company to file that case. Accused person gave illegible cheque against (sic) personal loan. There was a loan against between the parties. He was physically part at the time of execution of the loan against. That against took place on 23rd April 2003. He had not filed the original against in the Court (sic). Not a fact that there was no such against was illegible in my presence. Ext.-2 was shown to witness seeing that he says it does not been seal or rubber stamp of the issuing bank. Ext.-5 (series) was shown to witness. Seeing that he says there A/D cards was not noticed that there were received for the accused

persons. Not a fact that accused persons had no liability. Not a fact that accused person did not receive the notice.

17. The order dated 16.06.2023 of this Court is reproduced as follows:-

“Mr. Deb, learned advocate for the appellant submits that the Ing Vysya Bank has merged with Kotak Mohindra Bank Limited on 1st April, 2015. Let the document to that effect be kept on record.

The authorized representative of Kotak Mohindra Bank is present in Court today. His personal appearance is noted and dispensed with.

The learned advocate for the appellant is directed to take steps in modifying the cause title of the appeal.

Department is directed to supply the paper book to the learned advocate for the appellant as well as learned advocate for the respondents in the meantime.

Let the matter be fixed on 4th August, 2023.

Copy of the order be sent to the Department for due compliance.”

Subsequently, the cause title was modified.

18. In the case of **TRL Krosaki Refractories Ltd. v. SMS Asia (P) Ltd.**¹⁴, the following was held by the Hon’ble Supreme Court:-

“21. A meaningful reading of the above would indicate that the company having authorised the General Manager (Accounting) and the General Manager (Accounting) having personal knowledge had in fact been clearly averred. What can be treated as an explicit averment, cannot be put in a straitjacket but will have to be gathered from the circumstance and the manner in which it has been averred and conveyed, based on the facts of each case. The manner in which a complaint is drafted may vary from case to case and would also depend on the skills of the person drafting the same which by itself, cannot defeat a substantive right. However, what is necessary to be

¹⁴(2022) 7 SCC 612

taken note of is as to whether the contents as available in the pleading would convey the meaning to the effect that the person who has filed the complaint, is stated to be authorised and claims to have knowledge of the same. In addition, the supporting documents which were available on the record by themselves demonstrate the fact that an authorised person, being a witness to the transaction and having knowledge of the case had instituted the complaint on behalf of the “payee” company and therefore, the requirement of Section 142 of the NI Act was satisfied. In *Vinita S. Rao v. Essen Corporate Services (P) Ltd.* [*Vinita S. Rao v. Essen Corporate Services (P) Ltd.*, (2015) 1 SCC 527 : (2015) 1 SCC (Civ) 558 : (2015) 1 SCC (Cri) 726], to which one of us (the Hon'ble CJI) was a member of the Bench has accepted the pleading of such a nature to indicate the power to prosecute the complaint and knowledge of the transaction as sufficient to maintain the complaint.

22. Despite our conclusion that the documents available on record would on facts satisfy the requirement relating to delegation of power and also knowledge of the transaction by the person representing the Company in the instant case, it is also necessary for us to keep in perspective that though the case in *A.C. Narayanan* [*A.C. Narayanan v. State of Maharashtra*, (2014) 11 SCC 790 : (2014) 4 SCC (Civ) 343] has taken the centre stage of consideration, the facts involved therein were in the background of the complainant being an individual and the complaint filed was based on the power of attorney issued by the “payee” who was also an individual. In such an event, the manner in which the power was being exercised was to be explicitly stated so as to establish the right of the person prosecuting the complaint, to represent the payee i.e. the complainant. The position that would emerge when the complainant is a company or a corporate entity will have to be viewed from a different standpoint.

23. *In this regard in Samrat Shipping Co. (P) Ltd. v. Dolly George [Samrat Shipping Co. (P) Ltd. v. Dolly George, (2002) 9 SCC 455 : 2003 SCC (Cri) 1224] , while disapproving the manner in which cognizance was refused to be taken and the complaint had been dismissed by the learned Magistrate at the threshold, this Court has held as hereunder : (SCC p. 456, para 3)*

“3. Having heard both sides we find it difficult to support the orders challenged before us. A company can file a complaint only through human agency. The person who presented the complaint on behalf of the Company claimed that he is the authorised representative of the company. Prima facie, the trial court should have accepted it at the time when a complaint was presented. If it is a matter of evidence when the accused disputed the authority of the said individual to present the complaint, opportunity should have been given to the complainant to prove the same, but that opportunity need be given only when the trial commences. The dismissal of the complaint at the threshold on the premise that the individual has not produced certified copy of the resolution appears to be too hasty an action. We, therefore, set aside the impugned orders and direct the trial court to proceed with the trial and dispose of it in accordance with law. Parties are directed to appear before the trial court on 31-1-2000.”
(emphasis supplied)

24. *Further, in National Small Industries Corpn. Ltd. v. State (NCT of Delhi) [National Small Industries Corpn. Ltd. v. State (NCT of Delhi), (2009) 1 SCC 407 : (2009) 1 SCC (Civ) 192 : (2009) 1 SCC (Cri) 513] , this Court though was essentially considering the issue relating to the exemption available against examining a public servant keeping in view the scope under Section 200(a)CrPC has exhaustively considered the validity of a complaint under Section 138 of the NI Act and the satisfaction of the requirement under Section 142 thereof. In the said context this Court has held as hereunder : (SCC pp. 415-18, paras 14, 16 & 19)*

“14. The term “complainant” is not defined under the Code. Section 142 of the NI Act requires a complaint under Section 138 of that Act to be made by the payee (or by the holder in due course). It is thus evident that in a complaint relating to dishonour of a cheque (which has not been endorsed by the payee in favour of anyone), it is the payee alone who can be the complainant. The NI Act only provides that dishonour of a cheque would be an offence and the manner of taking cognizance of offences punishable under Section 138 of that Act. However, the procedure relating to initiation of proceedings, trial and disposal of such complaints, is governed by the Code. Section 200 of the Code requires that the Magistrate, on taking cognizance of an offence on complaint, shall examine upon oath the complainant and the witnesses present and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses. The requirement of Section 142 of the NI Act that the payee should be the complainant, is met if the complaint is in the name of the payee. If the payee is a company, necessarily the complaint should be filed in the name of the company, if a company is the complainant. A company can be represented by an employee or even by a non-employee authorised and empowered to represent the company either by a resolution or by a power of attorney.

16. Section 142 only requires that the complaint should be in the name of the payee. Where the complainant is a company, who will represent the company and how the company will be represented in such proceedings, is not governed by the Code but by the relevant law relating to companies. Section 200 of the Code mandatorily requires an examination of the complainant; and where the complainant is an incorporeal body, evidently only an employee or representative can be examined on its behalf, as a result, the company becomes a de jure complainant and its employee or other representative, representing it in the criminal proceedings, becomes

the de facto complainant. Thus in every complaint, where the complainant is an incorporeal body, there is a complainant—de jure, and a complainant—de facto. Clause (a) of the proviso to Section 200 provides that where the complainant is a public servant, it will not be necessary to examine the complainant and his witnesses. Where the complainant is an incorporeal body represented by one of its employees, the employee who is a public servant is the de facto complainant and in signing and presenting the complaint, he acts in the discharge of his official duties. Therefore, it follows that in such cases, the exemption under clause (a) of the first proviso to Section 200 of the Code will be available.

19. Resultantly, when in a complaint in regard to dishonour of a cheque issued in favour of a company or corporation, for the purpose of Section 142 of the NI Act, the company will be the complainant, and for purposes of Section 200 of the Code, its employee who represents the company or corporation, will be the de facto complainant. In such a complaint, the de jure complainant, namely, the company or corporation will remain the same but the de facto complainant (employee) representing such de jure complainant can change, from time to time. And if the de facto complainant is a public servant, the benefit of exemption under clause (a) of the proviso to Section 200 of the Code will be available, even though the complaint is made in the name of a company or corporation.”
(emphasis supplied)

25. *In that view, the position that would emerge is that when a company is the payee of the cheque based on which a complaint is filed under Section 138 of the NI Act, the complainant necessarily should be the company which would be represented by an employee who is authorised. Prima facie, in such a situation the indication in the complaint and the sworn statement (either orally or by affidavit) to the effect that the complainant (Company) is represented by an*

authorised person who has knowledge, would be sufficient. The employment of the terms “specific assertion as to the knowledge of the power-of-attorney holder” and such assertion about knowledge should be “said explicitly” as stated in A.C. Narayanan [A.C. Narayanan v. State of Maharashtra, (2014) 11 SCC 790 : (2014) 4 SCC (Civ) 343] cannot be understood to mean that the assertion should be in any particular manner, much less only in the manner understood by the accused in the case. All that is necessary is to demonstrate before the learned Magistrate that the complaint filed is in the name of the “payee” and if the person who is prosecuting the complaint is different from the payee, the authorisation therefor and that the contents of the complaint are within his knowledge. When, the complainant/payee is a company, an authorised employee can represent the company. Such averment and prima facie material is sufficient for the learned Magistrate to take cognizance and issue process. If at all, there is any serious dispute with regard to the person prosecuting the complaint not being authorised or if it is to be demonstrated that the person who filed the complaint has no knowledge of the transaction and, as such that person could not have instituted and prosecuted the complaint, it would be open for the accused to dispute the position and establish the same during the course of the trial. As noted in Samrat Shipping Co. [Samrat Shipping Co. (P) Ltd. v. Dolly George, (2002) 9 SCC 455 : 2003 SCC (Cri) 1224] , dismissal of a complaint at the threshold by the Magistrate on the question of authorisation, would not be justified. Similarly, we are of the view that in such circumstances entertaining a petition under Section 482 to quash the order taking cognizance by the Magistrate would be unjustified when the issue of proper authorisation and knowledge can only be an issue for trial.”

19. The Hon'ble Supreme Court in **A.C. Narayanan v. State of Maharashtra**¹⁵, held the following:-

“11.4. In the aforementioned premises interpretation of Section 142(a) of the NI Act comes up for consideration before us. We may notice that in M.M.T.C. Ltd. v. Medchl Chemicals & Pharma (P) Ltd. [M.M.T.C. Ltd. v. Medchl Chemicals and Pharma (P) Ltd., (2002) 1 SCC 234 : 2002 SCC (Cri) 121] , a Division Bench of this Court has opined: (SCC p. 238, para 11)

‘11. This Court has, as far back as, in Vishwa Mitter v. O.P. Poddar [Vishwa Mitter v. O.P. Poddar, (1983) 4 SCC 701 : 1984 SCC (Cri) 29] held that it is clear that anyone can set the criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate entitled to take cognizance. It has been held that no court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. It has been held that if any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, then the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute. In the present case, the only eligibility criteria prescribed by Section 142 is that the complaint must be by the payee or the holder in due course. This criteria is satisfied as the complaint is in the name and on behalf of the appellant Company.’

....One of the questions which would arise for consideration is as to whether the eligibility criteria prescribed by Section 142(a) of the 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 and/or whether a complaint petition has to be presented before the Court by the payee or the holder of the cheque himself.

¹⁵(2015) 12 SCC 203

7. Another issue which would arise for consideration is as to whether the payee must examine himself in support of the complaint petition keeping in view the insertion of Section 145 of the said Act (55 of 2002).

8. In our opinion, in view of difference of opinion amongst various High Courts as also the decisions of this Court in *M.M.T.C. Ltd. v. Medchl Chemicals and Pharma (P) Ltd.*, (2002) 1 SCC 234 : 2002 SCC (Cri) 121] and *Janki Vashdeo Bhojwani v. Indusind Bank Ltd.*, (2005) 2 SCC 217], particularly in view of the fact that in the latter case the earlier one was not noticed, an authoritative pronouncement is necessary to be given in this regard. We, therefore, are of the opinion that the matter should be considered by a larger Bench.”

12. The matter was considered by a larger Bench of three Judges. By judgment dated 13-9-2013 in *A.C. Narayanan v. State of Maharashtra* [*A.C. Narayanan v. State of Maharashtra*, (2014) 11 SCC 790 : (2014) 4 SCC (Civ) 343] the said larger Bench framed the following questions: (SCC p. 803, para 21)

“21.1.(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 the 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?

21.2.(ii) Whether a power-of-attorney holder can be verified on oath under Section 200 of the Code?

21.3.(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?

21.4.(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?

21.5.(v) Whether the proceedings contemplated under Section 200 of the Code can be dispensed with in the light of Section 145 of the NI Act which was introduced by an amendment in the year 2002?”

13. *The first question relating to the eligibility of power-of-attorney holder to sign and file a complaint petition on behalf of the complainants and whether eligibility criteria prescribed by Section 142(a) of the NI Act is satisfied, if the complaint petition itself is filed in the name of the payee or the holder in due course of the cheque, was answered by a larger Bench in the affirmative by its judgment in A.C. Narayanan v. State of Maharashtra [A.C. Narayanan v. State of Maharashtra, (2014) 11 SCC 790 : (2014) 4 SCC (Civ) 343] with observation, which reads as follows: (SCC p. 806, para 26)*

“26. As noticed hereinabove, though Janki Vashdeo Bhojwani [Janki Vashdeo Bhojwani v. Indusind Bank Ltd., (2005) 2 SCC 217] relates to powers of power-of-attorney holder under CPC but it was concluded therein that a plaint by a power-of-attorney holder on behalf of the original plaintiff is maintainable provided he has personal knowledge of the transaction in question. In a way, it is an exception to a well-settled position that criminal law can be put in motion by anyone (vide Vishwa Mitter [Vishwa Mitter v. O.P. Poddar, (1983) 4 SCC 701 : 1984 SCC (Cri) 29]) and under the statute, one stranger to transaction in question, namely, legal heir, etc. can also carry forward the pending criminal complaint or initiate the criminal action if the original complainant dies (vide Ashwin Nanubhai Vyas v. State of Maharashtra [Ashwin Nanubhai Vyas v. State of Maharashtra, AIR 1967 SC 983 : 1967 Cri LJ 943 : (1967) 1 SCR 807] . Keeping in mind various situations like inability as a result of sickness, old age or death or staying abroad of the payee or holder in due course to appear and depose before the court in order to prove the complaint, it is permissible for the power-of-attorney holder or for the legal representative(s) to file a complaint and/or continue with the pending criminal complaint for and on behalf of payee or holder

in due course. However, it is expected that such power-of-attorney holder or legal representative(s) should have knowledge about the transaction in question so as to be able to bring on record the truth of the grievance/offence, otherwise, no criminal justice could be achieved in case payee or holder in due course, is unable to sign, appear or depose as complainant due to abovequoted reasons. Keeping these aspects in mind, in M.M.T.C. [M.M.T.C. Ltd. v. Medchl Chemicals and Pharma (P) Ltd., (2002) 1 SCC 234 : 2002 SCC (Cri) 121], this Court had taken the view that if complaint is filed for and on behalf of payee or holder in due course, that is good enough compliance with Section 142 of the NI Act.”

14. *The second question relating to verification of power-of-attorney holder on oath as prescribed under Section 200 of the Code was answered as follows: (A.C. Narayanan case [A.C. Narayanan v. State of Maharashtra, (2014) 11 SCC 790 : (2014) 4 SCC (Civ) 343], SCC pp. 807-08, paras 27 & 29-32)*

“27. 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.

29. From a conjoint reading of Sections 138, 142 and 145 of the NI 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 NI 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 NI Act. It is only if and where the Magistrate, after considering the complaint under Section 138 of the NI 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 NI Act.

30. 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 NI 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.

31. 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.

32. Similar substantial questions were raised in the appeal arising out of SLP (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 authorised 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."

15. While holding that there is no serious conflict between the decisions in "M.M.T.C. [M.M.T.C. Ltd. v. Medchl Chemicals and Pharma (P) Ltd., (2002) 1 SCC 234 : 2002 SCC (Cri) 121] and Janki

Vashdeo Bhojwani [Janki Vashdeo Bhojwani v. Indusind Bank Ltd., (2005) 2 SCC 217] ”, the larger Bench clarified the position and answered the questions framed in the following manner: (A.C. Narayanan case [A.C. Narayanan v. State of Maharashtra, (2014) 11 SCC 790 : (2014) 4 SCC (Civ) 343] , SCC pp. 808-09, para 33)

“33.1(i) Filing of complaint petition under Section 138 of the NI Act through power of attorney is perfectly legal and competent.

33.2(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.

33.3(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.

33.4(iv) In the light of Section 145 of the NI 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 NI 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 NI Act.

33.5(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.”

Case of A.C. Narayanan

16. *In this 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. It is not in dispute that the complaint against the appellant was not preferred by the payee or the holder in due course and the statement on oath of the person who filed the complaint has also not stated that he filed the complaint having been instructed by the payee or holder in due course of the cheque. Since the complaint was not filed abiding with the provisions of the Act, it was not open to the Magistrate to take cognizance.

17. *From the bare perusal of the said complaint, it can be seen that except mentioning in the cause-title there is no mention of, or a reference to the power of attorney in the body of the said complaint nor was it exhibited as part of the said complaint. Further, in the list of evidence there is just a mere mention of the words at Serial No. 6 viz. “power of attorney”, however there is no date or any other particulars of the power of attorney mentioned in the complaint. Even in the verification statement made by Respondent 2, there is not even a whisper that she is filing the complaint as the power-of-attorney holder of the complainant. Even the order of issue of process dated 20-2-1998 does not mention that the Magistrate had perused any power of attorney for issuing process.”*

20. In the case of **A.C. Narayanan v. State of Maharashtra**¹⁶, the Hon'ble Supreme Court held the following:-

“29. *From a conjoint reading of Sections 138, 142 and 145 of the NI 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*

¹⁶(2014) 11 SCC 790

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 NI 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 NI Act. It is only if and where the Magistrate, after considering the complaint under Section 138 of the NI 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 NI Act.

30. *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 NI 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.*

33. While holding that there is no serious conflict between the decisions in *M.M.T.C. [M.M.T.C. Ltd. v. Medchl Chemicals and Pharma (P) Ltd., (2002) 1 SCC 234 : 2002 SCC (Cri) 121]* and *Janki Vashdeo Bhojwani [Janki Vashdeo Bhojwani v. IndusInd Bank Ltd., (2005) 2 SCC 217]*, we clarify the position and answer the questions in the following manner:

33.1. Filing of complaint petition under Section 138 of the NI Act through power of attorney is perfectly legal and competent.

33.2. 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.

33.3. 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.

33.4. In the light of Section 145 of the NI 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 NI 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 NI Act.”

21. The complaint filed before the Court of Chief Metropolitan Magistrate, Calcutta, mentioned Ing Vysya Bank Limited to be the complainant represented through its authorized representative Mr. Asim Dasgupta.

22. Paragraph-1 of the said complaint mentioned *“At the capacity of constituted attorney of the present petitioner is filing this complaint for and on behalf of the said Vysya Bank Ltd.*

*A copy of the Power of Attorney is being annexed hereto and filed herewith being marked as **Annexure “A”**.*

23. Paragraph – 2, 3, 4, 5 and 6 described the relationship between the parties, issuance of cheque to the opposite party by the present Bank, the dishonour of the cheque, the issuance of notice by the complainant Bank, failure on the part of the opposite party to re-pay the loan.

24. The narrative as elucidated in the aforesaid paragraphs were apparently within the knowledge of the complainant Mr. Asim Dasgupta. During his deposition as PW-1, said Asim Dasgupta had filed his examination-in-chief under Section 145 of the N.I. Act signed the same. He stated that he did not file the original power of attorney.

25. The Learned Trial Court in its judgment dated 20.12.2007, observed as follows:-

“We know as per S/ 142 of N.I. Act a complaint u/s. 138 of N.I. Act can be filed by an authorised representative or agent of the person in whose favour the cause of action for making such complaint has arisen. Authorised agent of the payee can do this on the basis of power of Attorney. It is established law that if the complaint is signed by a person described as the Senior Accountant and authorised by deed of Power of Attorney, the complaint is properly filed, and maintainable (2002(2) Crimes 19 (Mad), Here in the instant case P.W. 1 in his examination in Chief stated that he is lawful attorney of the complainant Bank and duly authorised by virtue of a Power of Attorney. This Power of Attorney dt. 30th July, 2 1999 was duly executed by Shri Koka V. Rao, Senior Vice-

President- HRM. But complainant company did not file the original Power of Attorney to stand that it has authorised the P.W. 1 to file this case or to depose on its behalf. Complainant ought to have submit and exhibit the power of Attorney. In absence of said power of attorney, complainant failed to prove that P.W. 1 is their authorised representative. Section 146 of N.I. Act speaks that the court shall, in respect of every proceeding under this chapter, on production of bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved. In the instant case return memo is marked is Ext.-2, but it does not bear any official seal of the concern bank. So, as per provision of S/ 146 of N.I. Act, it can not be presumed that cheque was issued from proper bank or it dishonoured.

So, keeping in mind the above position of law I am to hold that this P.W. 1 i.e. Dasgupta, had no authority to file the petition of complaint against the accused person on behalf of ING Vysya Bank Ltd. when this Asim Dasgupta had no authority to file this case then I do not find any reason to go into the merit of the case.”

26. The Paragraph Nos. 4, 5 and 6 of the instant criminal appeal states as follows:-

“4. The Appellant states that the prosecution examined one witness and accepted all the relevant documents.

5. The Appellant states that since the Appellant did not feel it expedient to examine any more witness because of relevant documents were accepted as exhibits and no witness from the accused bank was called for evidence because of the reason as it was not mandatory u/s 146 of N.I. Act.

6. The original power of attorney granted on behalf of the complainant bank being the singular copy was not exhibited in the case but a copy of the said power of attorney was filed alongwith

the complaint and submitted that same would be produced if so required anytime.

27. The Learned Trial Court should have insisted the appellant to produce the original copy of the power of attorney considering the submission that a copy of the said power of attorney was annexed. The facts of the dispute as narrated in the complaint affirmed by the authorized representative of the appellant bank signified the knowledge of the aforesaid representative to institute and pursue the complaint case on behalf of the payee bank in terms of the Section 142(1)(a) of the N.I. Act.
28. In view of the above discussions, the authority of the representative of the appellant bank to file the complaint and represent the bank is justified and the Learned Trial Court had not considered the merits of the case and should have insisted upon production of further evidence from the accused bank for satisfying itself to validate the provisions under Section 146 of the N.I. Act.
29. The Trial Court is directed to consider materials on record through proper evidence with regard to submission of original power of attorney which is in the custody and domain of appellant bank as affirmed by the appellant bank in its revisional application. The Learned Trial Court is to consider fresh oral and documentary evidence and decide the issue in question on merits.
30. Under such facts and circumstances, the judgment and order of acquittal dated 20.12.2007 passed by the Learned Metropolitan Magistrate, 13th Court at Calcutta in Case No. C/7873/05 under Sections 138/141 of Negotiable Instruments Act, 1881 is set aside.

31. There is no order as to costs.

32. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

33. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)