

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 333 of 2009

**M/s Hyatt Regency, Kolkata
-Vs-
The State of West Bengal & Ors.**

For the Appellant : Mr. Sumanta Ganguly
(Amicus Curiae)

For the Opposite Party Nos.2 and 3 : Mr. Avishek Sinha
(Amicus Curiae)

Heard on : 14.03.2024, 24.04.2024, 22.05.2024,
04.10.2024

Judgment on : 07.05.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 14.08.2008 passed by the Learned Additional Sessions Judge, 6th Fast Track Court, Bichar Bhavan, Calcutta in Criminal Appeal No.97 of 2007 acquitting thereby the accused/respondents no.2 and 3 from all the charges by setting aside the judgment and order dated 05.09.2007 passed by the Learned Metropolitan Magistrate, 12th Court, Calcutta in Case No. C-4802 of 2002 thereby convicting the accused/respondents no.2 and 3 of the charge under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881

and order dated 05.09.2007 passed by the Learned Metropolitan Magistrate, 12th Court, Calcutta in Case No.C-4802 of 2002 thereby finding the respondent nos.2 and 3 guilty of committing an offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act and sentencing the respondent no.2 to pay fine of Rs.10000/- in default to issue Distress Warrant and sentenced the respondent no.3 to suffer simple imprisonment for 6 months and to pay a sum of Rs.2,00,000/- as compensation to the complainant/appellant.

2. The complaint case no.C-4802 of 2002 had been initiated on the basis of a complaint filed by the appellant before the Court of the Learned Chief Metropolitan Magistrate, Calcutta, *inter alia*, disclosing commission of an offence by the respondent nos. 2 and 3 punishable under Section 138 read with Section 141 of the Negotiable Instrument Act. The averments in the said complaint comprised of the following:-

- a) The appellant was a company which runs hotels at Calcutta. The respondent no.2 was a partnership firm while the respondent no.3 was one of its partners.
- b) The respondent nos.2 and 3 with a view to organize a fashion show in the city of Calcutta approached the appellant company for accommodation in the ballroom on hire.
- c) Such fashion show was to be organized on 14th and 15th September, 2002 in the Regency Ballroom of the appellant company and the appellant was not provide for lunch, dinner and other facilities.

- d) In discharge of their existing liability, the accused person issued two cheques to the complainant/appellant for Rs.50,000/- each towards part payment of the charges.
 - e) However, on presentation of the aforesaid two cheques by the appellant with its banker within its validity period, the same returned dishonoured with the remark 'payment stopped by the drawer'. The said intimation was received by the appellant vide two separate memos on 19.09.2002.
 - f) Thereafter, the appellant issued a demand notice to the accused persons but the said notice returned unserved with the postal endorsement dated 08.10.2002 as 'not known'.
 - g) It was thus the contention of the complainant that as the accused/respondent nos.2 and 3 failed to pay the amount mentioned in the two dishonored cheques they had committed an offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act.
3. Charges were framed against the appellant to whom they pleaded not guilty and claimed to be tried.
4. In order to prove its case, the prosecution examined one witness and exhibited certain documents. Defence also examined one witness i.e., accused no.2 himself as DW-1 and also filed certain documents.

5. The Learned *Amicus Curiae* representing the appellant submitted as follows:-

- i. The observations in the impugned order thereby cast suspicion on the genuineness of the Power of Attorney (being Exbt.-1), based on assumptions and conjectures.
- ii. The Power of Attorney filed on behalf of the appellant, was required to be considered as to whether the same duly authorized a person to represent the appellant, which was a juristic personality, for initiating legal action against the private respondents. There was no finding in the impugned order that the Power of Attorney was not otherwise valid but suspicion was cast upon the Power of Attorney on the ground that the said Power of Attorney was executed prior to the date mentioned in the cheque.
- iii. Existence of a legally enforceable debt had been established:- In the instant case sufficient evidence had been brought on record to establish the existence of a legally enforceable debt on the part of the private respondents. Even the Learned Appellate Court had also come to a specific finding that the two cheques in question were in fact issued in discharge of the existing liability towards part payment.
- iv. Since mandatory provisions of Order 39 Rules 3(a) and 3(b) of the Code of Civil Procedure, 1908 were not complied the demand notice could not be said to be illegal:- From the order sheets tendered in evidence through DW it would appear that on

26.09.2002 an *ad interim* order of injunction was passed by the Learned Civil Court concerned *inter alia* restraining the appellant from claiming and/or demanding any amount from the private respondents (plaintiff) in terms of the agreement dated 10.09.2002.

- v. However, by the same order dated 26.09.2002 the private respondents (plaintiff) were also directed by the Learned Civil Court concerned to comply with the provisions of Order 39 Rules 3(a) and 3(b) of the Code of Criminal Procedure, 1908 and the next date was fixed on 11.11.2002.
- vi. On 11.11.2002 the private respondents (plaintiff) were once again directed to file the requisite. That showed as on provisions of Order 39 Rules 3(a) and 3(b) of the Code of Civil Procedure, 1908.
- vii. On 03.10.2002, two statutory demand notices were issued by the appellant and it was not disputed.
- viii. Non-compliance with requisites as mandated under Order 39 Rules 3(a) and 3(b) of the Code of Civil Procedure, 1908 on the part of the plaintiff could not be allowed to go without any consequence and to enable him to have only advantage of it. The consequence of the party (who secured the order) for not complying with the duties he was required to perform the order was not obeyed by the other party. A disobedient beneficiary of an order could not be heard to complain against any disobedience alleged against another party.
- ix. In the instant case it was a matter of record that even on 11.11.2002 no requisites were deposited by the private respondent

which meant the mandatory provisions of Order 39 Rules 3(a) and 3(b) of the Code of Criminal Procedure, 1908 were not complied with. Therefore, the appellant was well within its rights to issue the statutory demand notices on 03.10.2002 and the same were completely valid in the eye of law. However, the Learned Appellate Court had come to a finding which was totally perverse and contrary to the settled position of law as laid down by the Hon'ble Supreme Court as well as by this Hon'ble Court and in the process, it had held that the statutory demand notices were bad in law.

6. The Learned Advocate representing the opposite party nos.2 and 3 submitted that the appellant was bound by the order of the Civil Court and should not have proceeded with the filing of the criminal case on the basis of an irregular power of attorney and the Learned Additional Sessions Judge rightly passed the impugned order and the instant appeal shall be dismissed.
7. A circumspection of evidence of the prosecution witnesses revealed as follows:-
 - i. PW-1 in his cross-examination stated that Exhibit-1, Power of Attorney, in his favour. It was neither registered nor notarized. There was no address of witnesses in the said Power of Attorney. The Power of Attorney did not bear any stamp of Hyatt Regency. Exhibit-1 was dated 08.09.2002. The cheque involved in that case was dated 14.09.2002. There was no such document filed in that

case to the effect that the company to the effect that the company secretary was empowered by the Co. to issue Power of Attorney in his favour. No such resolution of the Board of Directors had been filed in that case. The cheque was issued, so far he remember on account of the charges of 14th and 15th September, 2002. It might be that a Title Suit was pending before the Ld. City Civil court regarding the same incident.

- ii. DW-1 deposed that there was an agreement in between himself and Hyatt Regency for organizing a fashion show. The agreement was sent to him by Fax from Hyatt Regency. He could not recollect date of the agreement. As per agreement the fashion show was scheduled to be held on 14th and 15th September, 2002 at Hyatt Regency Ballroom. He had an event management company under the name and style of Maurik Advertising and Publication. They used to organize different types of events after contacting different companies, all over India. The fashion show was scheduled to be held at show room but salesman of Hyatt Regency approached them stating the hotel was newly functioned and they would provide them better facilities than show room. Bedisha Roy, who was marketing manager of Hyatt Regency met him discussed the programme. The show was not completed successfully. On both days there were chaotic situations. On several occasions there were power cuts. There was no arrangement of drinking water after dinner and dinner was not upto the mark. Models of National and

International Levels came there. On the second day their programme stopped midway and they lodged complaint with Miss Monila Paul and General Manager Praven Chowla. They visited the show room and changed eight times. They lodged their complaint to Praveen Chowla in writing. He deposited the original complaint in another case. As the complainant did not provide them with facilities as per agreement, he directed his banker to stop payment of the cheque abound. Since then his business and goodwill suffered a lot and till now he could not make good the loss sustained by him. There was sufficient fund in his account to honor the cheques. He did not receive any notice from the complainant. He lodged case against the complaint before City Civil Court. An injunction order was passed by City Civil Court regarding demand of complaint. The certified copy of the order dated 26.09.02, 11.11.02 & 29.05.03 of City Civil Court passed in connection with Title Suit no.444 of 2002 was marked as Exhibit-A. The show was sponsored by Pepsi, Priya Biscuits, U.B. Groups, Shaw Wallaces. The sponsorer company did not pay them any cash amount paid in kind was taken away by the complainant company. Shaw Wallace gave them 100 cases of Beer which was kept by Hyatt Regency. The letter sent to them by Shaw Wallace confirming that they supplied 100 case of Beer to be consumed in the show (Exhibit-B).

- iii. During his cross-examination DW-1 stated that two cases of dishonor of cheques were pending against him by Hyatt Regency regarding the incident dated 14/15.09.02. He did not have any other witness in that case. He could not say whether injunction order was passed ex-parte or not. It was true that the injunction order was vacated. The suit was still pending. It was the allegation that impurities were found in the food was true. The celebrities who came in that programme complained to him but they did not make any written complaint. Their sponsorer did not make any complaint in writing to him.
8. It is axiomatic that the Negotiable Instruments Act, 1881 is a special statute intended to foster the sanctity of financial instruments particularly cheques in commercial transaction. The object and purport of Section 138 of the said Act are to ensure prompt and smooth functioning of trade or commercial transactions by penalizing the drawer of a cheque who willfully dishonours a legal liability and/or commitment undertaken by way of such negotiable instrument.
9. In the context, it is to be considered whether the invocation of civil jurisdiction under Order 39 of the Code of Civil Procedure by the drawer whereby an *ad interim* injunction order is obtained to maintain *status quo* – either generally restraining coercive action or specifically preventing presentation of the cheque would denude or dilute statutory force of Section 138 of the Negotiable Instruments Act.

10. The Hon'ble Supreme Court in *Modi Cements Ltd. Vs. Kuchil Kumar Nandi* (1998) 3 SCC 249 decisively held even if the drawer issued a 'stop payment' instruction or if an injunction order was obtained, the offence under Section 138 of the N.I. Act had been complete upon dishonour of the cheque provided the statutory conditions had been fulfilled. A cheque cannot be rendered immune mere criminal liability merely on the basis of civil restraint unless the cheque itself is shown to have been issued for purposes devoid of legal enforceability.
11. In *ICDS Ltd. Vs. Bina Shiber* (2002) 6 SCC 426, it was reiterated that pendency of civil proceedings or existence of an interim civil order cannot by itself vitiate criminal prosecution under Section 138 of the Negotiable Instruments Act since both remedies operate in distinct legal spheres – one civil and the other penal.
12. A similar reiteration had been observed in *R. Vijayan Vs. Baby* (2012) 1 SCC 260 by the Hon'ble Apex Court clarified that proceedings under the Negotiable Instruments Act were not barred merely due to pendency of civil litigation or injunctive relief unless the drawer was able to rebut the presumption under Section 139 of the said Act with cogent evidence that the cheque was not issued in discharge of a legal enforceable liability.
13. Thus, in absence of specific injunction restraining the complainant from presenting the cheque and without a categorical finding that the cheque was obtained fraudulently or issued without consideration, the statutory presumption in favour of the complainant held good and the complaint under Section 138 of the N.I. Act could be maintainable in law. The criminal

process shall not be interdicted by the pendency of civil relief save and except in cases where the cheque is demonstrably shown to have been issued without enforceable liability or in contravention of a binding judicial restraint. In absence thereof the statutory presumption under Section 139 of the N.I. Act operates and the criminal complaint is not rendered infructuous or barred by such civil injunction.

14. In the instant case and mere order of injunction stating *status quo* without specifying the condition preventing the presentation of cheque or encashment of the same will not create any embargo in instituting a criminal case and the Learned Sessions Judge without considering the proper legal perspective had observed that the appellant should not have proceeded to present the cheque and/or institute a criminal case. As far as the issue of Power of Attorney is concerned, evidently the same was executed on 8th of September, 2002 prior to the date of issuance of the cheques in question. The Power of Attorney, *inter alia*, stated as follows:-

“POWER OF ATTORNEY

I, Ashwin A. Shirali, S/o. Shri A.R. Shirali, resident of B-6/18, Safdarjung Enclave, New Delhi – 110029, Company Secretary of Asian Hotels Limited, owner of Hotel Hyatt Regency Delhi, Hotel Hyatt Regency Kolkata and Hotel Hyatt Regency Mumbai and having its registered office at Bhikaiji Cama Place, M.G. Marg, New Delhi – 110066 do hereby appoint Mr. Prosenjit De, S/o. Dr. P.B. De, currently Director of Finance, Hotel Hyatt Regency Kolkata as attorney of the Company in connection with a suit filed by the Company against Maurik Advertising and Publication Pvt. Ltd. under Negotiable Instrument Act, 1881 for default of payment of Rs. 8.14 Lacs and authorize him for the purpose hereinafter mentioned:

- 1) That the said attorney shall appoint a counsel to conduct the case against Maurik Advertising and Publicatoin Pvt. Ltd.
- 2) That the said attorney shall present himself on my behalf and move application in connection with the proceedings of the case.
- 3) That the said attorney shall do all other lawful work in connection with the said case.

And I hereby agree that all acts and things, lawfully done by my attorney shall be deemed to have been done by me and shall be binding on the Company.

In witness whereof, I have signed this power of attorney on this 8th day of September, 2002 in presence of the following witnesses.”

15. The appellant/company through the execution of Power of Attorney had mentioned that the company had already filed a suit under the Negotiable Instruments Act, 1881 or default of payment of Rs.8.14 lakhs which had been predated without knowledge that the cheque would be dishonoured or there would be a direction of ‘stop payment’.
16. In the case of **TRL Krosaki Refractories Ltd. v. SMS Asia (P) Ltd.**¹, 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

¹(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.”

17. In the case of **A.C. Narayanan v. State of Maharashtra**², 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 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*

²(2014) 11 SCC 790

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.”*

18. The Power of Attorney issued to the power of attorney holder authorizing him to conduct the specific actions through proper, literal construction appeared to be in anticipation of dealing with a dispute and accordingly the same cannot be negated.
19. In view of the above discussions, the instant criminal appeal being CRA 333 of 2009 stands allowed.
20. Under such facts and circumstances, the judgment and order of acquittal dated 14.08.2008 passed by the Learned Additional Sessions Judge, 6th Fast Track Court, Bichar Bhavan, Calcutta in Criminal Appeal No.97 of 2007 is set aside.
21. Accordingly, the instant criminal appeal being CRA 333 of 2009 is disposed of.
22. There is no order as to costs.
23. I record my appreciation for the able assistance rendered by both the Learned Advocates Mr. Sumanta Ganguly and Mr. Avishek Sinha as *Amicus*

Curiae appearing for the appellant and respondent nos. 2 & 3 respectively in disposing of this appeal.

24. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
25. 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.)