

ORDER ON MEMO FILED BY THE ADVOCATE FOR COMPLAINANT.

1. When the matter has been posted for complainant evidence, the advocate for complainant has filed memo seeking to discard the evidence adduced by the power of attorney of complainant and permit the complainant to adduce his evidence.
2. It is stated in the memo that, the complainant herein appointed the power of attorney to prosecute the case and he has revoked the power of attorney, hence the evidence of power of attorney holder may be discarded and permit the complainant to adduce his evidence.
3. Per contra the learned Counsel for the accused has resisted this memo contending that, the memo is not maintainable. The power of attorney has adduced his sworn statement, accordingly this court has taken cognizance and registered criminal case against the accused. Now the power of attorney has been taken back by the complainant and he intends to prosecute the case.
4. It is further contended that, the power of attorney has filed the complaint and he has adduced his sworn statement, hence cross examination of power of attorney holder is necessary in the present complaint, otherwise, it would leads to additional evidence. Hence, no such provisions is available under Law to prosecute the case by the original complainant. Hence, the Court cannot give permission as per the request

made in the memo. It is further contended that, the power of attorney has filed false complaint by forging documents and prays to dismiss the memo.

5. Heard arguments of both sides and perused the materials available on record.
6. The following points would arise for my consideration.
 1. Whether the memo filed by the complainant is deserves to be allowed ?
 2. What order ?
7. My answer to the above points as under :-
 - Point No.1:- In the Negative.
 - Point No.2:- As per the final order as follows:-

REASONS

8. **POINT NO.1:-** It is matter of fact that, the power of attorney holder of the complainant herein filed complaint against the accused under Section 200 of Criminal Procedure Code for the offence punishable under Section 138 of Negotiable Instruments Act.
9. Thereafter, the power of attorney holder of complainant has adduced his sworn statement, thereafter this Court has taken cognizance for the offence punishable under Section 138 of Negotiable Instruments Act. Thereafter the Accused herein appeared before the Court upon service of summons and he

was enlarged on bail. Thereafter the plea of the accused is recorded and he pleaded not guilty and he claims to be tried by this Court. Thereafter the matter has been posted for evidence of complainant.

10. At this juncture, the advocate for complainant herein filed memo seeking to discard the evidence adduced by the power of attorney of complainant and permit the complainant to adduce his evidence based on the ground that, the complainant herein appointed the power of attorney to prosecute the case and he has revoked the power of attorney, hence the evidence of power of attorney holder may be discarded and permit the complainant to adduce his evidence.
11. On the other hand, the accused herein contended that, the memo is not maintainable. The power of attorney has adduced his sworn statement, accordingly this court has taken cognizance and registered criminal case against the accused. Now the power of attorney has been taken back by the complainant and he intends to prosecute the case. The power of attorney has filed the complaint and he has adduced his sworn statement, hence cross examination of power of attorney holder is necessary in the present complaint, otherwise, it would leads to additional evidence. Hence, no such provisions is available under Law to prosecute the case by the original complainant. Hence, the Court cannot give permission as per the request made in the memo. It is further

contended that, the power of attorney has filed false complaint by forging documents and prays to dismiss the memo.

12. Both the counsels have addresses their respective arguments and they have reiterated the facts and circumstances of the case.
13. At this stage it is pertinent to note that, the learned counsel for complainant herein filed a memo on 20.07.2024 seeking to adduce the evidence of original complainant on the ground that, he has cancelled the GPA. This Court allowed the memo filed by the complainant vide order dated 20.07.2024 and the matter has been posted for evidence of original complainant. when the Court has granted permission the original complainant to adduce his evidence, then the question of filing of subsequent memo does no arise.
14. Furthermore, the complaint can be filed by Power of Attorney holder. In this regard, the Hon'ble Apex Court pleased to held in the decision reported in **(2008) 8 SCC 536** in the case of **Shankar Finance and Investment Co. Vs State of Andhra Pradesh**. Subsequently, by relying upon the above decision, the Hon'ble Apex Court has held similarly. The relevant decision is reported in **2009 Ker LT (2) 991 (SC) –Praveen Vs Mohd Tajuddin**. In the said case, the complaint was filed by an individual. In the latest decision of the Hon'ble Apex Court in the case of **A.C. Narayan Vs State of Maharashtra**, has reiterated its earlier view with some

modification. It is held that however, it is expected that such power of attorney holder or legal representative(s) should have knowledge about transaction in question so as to be able to bring on record truth of grievance/offence—If complaint is filed for and on behalf of payee or holder in due course, that is good enough compliance with Section 142 of N.I. Act. Further, the decision is rendered on 13-9-2013 in CrI. Appeal No.73/2007.

15. Hence, the power of attorney holder can file a complaint before the Court on behalf of original complainant. In the present case, the power of attorney holder of the complainant herein filed complaint against the accused under Section 200 of Criminal Procedure Code for the offence punishable under Section 138 of Negotiable Instruments Act. Thereafter, the power of attorney holder of complainant has adduced his sworn statement, thereafter this Court has taken cognizance for the offence punishable under Section 138 of Negotiable Instruments Act. Under such circumstances, the sworn statement of power of attorney of complainant cannot be discarded. But the complainant can be permitted to adduce his evidence before the Court, since the complainant has cancelled the power of attorney.
16. Furthermore, if the original complaint herein appeared before the Court and give evidence, the accused is having option to cross examine the complainant with all material points and it is helpful for effective adjudication of this case. As already

stated above this Court has already permitted the original complaint to adduce his evidence, hence the memo cannot be taken into consideration

17. On considering the scope of Section 348 of BNSS, it is evident that any Court may, at any stage of any inquiry, trial or other proceedings under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or re-call and re-examine, any person already examined ; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to be just decision of the case.
18. A memo must not be allowed only fill up lacuna causing serious prejudice or to give an unfair advantage to either of the parties. Further, the additional evidence must not be received as a disguise for re-trial, or to change the nature of the case against the either of the parties. Such power must be exercised in order to see that the evidence that is likely to be tendered by the witness, is germane to the issue involved. The power conferred under Section 348 of BNSS must therefore be invoked by the Court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection.
19. In the instant case I do not find any merit in the memo filed by the learned counsel for complainant. Therefore, this court

finds that, it just and proper to refuse the memo. Hence, this court answers point No.1 in the Negative.

20. **Point No.2**: For the reasons mentioned above, this court proceed to pass the following :-

ORDER

The memo filed by the learned counsel for complainant is hereby dismissed.

However, the complainant is hereby permitted to adduce his evidence as per order dated 20.07.2024.

The complainant is hereby directed to co-operate with the speedy disposal of the case.

For evidence of complainant.

Call on 31.07.2026

**Civil Judge and JMFC.
Siddapur.**