

GAHC010125722014



2026:GAU-AS:5358

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./313/2014

M/S SHRIRAM TRANSPORT FINANCE CO. LTD.
BRANCH OFFICE SITUATED AT SENAPATI COMMERCIAL COMPLEX, 2ND
FLOOR, NEAR ABHISHEK MOTORS, MONIRAM DEWAN ROAD,
SILPUKHURI, GUWAHATI, DIST. KAMRUP METRO, ASSAM. REP. BY ITS
AUTHORIZED OFFICER, THE BRANCH MANAGER, GWAH-I SRI CHAMPAK
TALUKDAR, SON OF SRI PARAMANANDA TALUKDAR, RESIDENT OF
BATAHGULI, P.O. PANJABARI, P.S. SATGAON DIST. KAMRUP M, ASSAM.

VERSUS

DULAL SEN
S/O LT. RAVI SEN C/O PRASHANANDA MEDHI R/O BYE LANE NO. 9,
SOUTH SARANIA, GUWAHATI, DIST. KAMRUP METRO, ASSAM.

Advocate for the Petitioner : MR.P GOHAIN, MR G KAKOTI,MS.M SARMAH,MS.D
BORGOHAIN,MR.B GOGOI

Advocate for the Respondent : MR.J C BARMAN, MS.M BHATTACHARJEE,MR.K C
DEKA,MR.D BANERJEE,MR.K BHATTACHARJEE

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

JUDGMENT AND ORDER (CAV)

Date : 30-03-2026

Heard Mr. G Kakoti, learned counsel for the petitioner. Also heard Mr. K Bhattacharjee, learned counsel for the respondents.

2. The present revision petition has been instituted by the petitioner assailing the judgment and order dated, 08.04.2014, passed by the Court of Learned Sessions Judge, Kamrup (M), Guwahati, in Criminal Appeal No. 143^k of 2012, setting aside the judgment and order dated, 17.11.2012, passed by the Court of the Learned Sub-Divisional Judicial Magistrate (S) (II), Kamrup in CR Case no. 4201/2010 (under Section 138 of Negotiable Instruments Act, 1881), convicting the Respondent, herein, under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to undergo Simple Imprisonment for 10 (Ten) months and further to pay consolidated compensation of Rs. 6,00,000/- (Rupees Six Lakhs Only), in default to undergo Simple Imprisonment for another 2 (Two) months, in default of payment of consolidated compensation.

3. The facts, in brief, requisite for adjudication of the issue, arising in the present Revision Petition, is noticed as under;

The respondent, herein, had approached the Petitioner/Company, requesting for finance to purchase vehicles. Accordingly, on the Respondent having been found to be eligible for being extended with finance, for purchase of vehicles, a loan cum hypothecation agreement was entered into between the Petitioner Company and the Respondent, herein, on 11.03.2008 and 12.03.2008, at Guwahati. The loan, accordingly, came to be sanctioned.

It is projected that the respondent was a habitual defaulter, with regard to the repayment of loan amount and several notices were issued to the respondents, as and when a lapse had occasioned in payment of monthly instalments. It is further projected that the respondent had, thereafter, issued a cheque bearing no. 296955 dated 07.10.2010 for an amount of Rs. 2,81,063/- (Rupees Two Lakh Eighty One Thousand Sixty Three Only) and another cheque

bearing no. 296954 dated 07.10.2010 for Rs. 1,65,474/- (Rupees One Lakh Sixty Five Thousand Four Hundred Seventy Four Only) drawn on Punjab National Bank, Fancy Bazar Branch, Guwahati.

The said cheques were deposited by the Petitioner/Company for clearance in their bank account, maintained with the Axis Bank Ltd. Guwahati, for collection. The said cheques, however, were dishonoured and returned vide memorandums dated 18.10.2010, assigning the ground "Funds Insufficient". The said aspect of the matter was informed to the Respondent and, thereafter, the Petitioner Company sent a demand notice dated 25.10.2010, invoking the provisions of Section 138 of the Negotiable Instruments Act, 1881, through their authorized Advocate by registered post with acknowledgement, requiring the Respondent to pay the amount of Rs. 4,46,537/- (Rupees Four Lakh Forty Six Thousand Five Hundred Thirty Seven Only), within 15 (Fifteen) days, from the date of receipt of the said demand notice. The said demand notice is projected to have been received by the respondent on 29.10.2010. The amount involved, not having been paid by the respondent, the Petitioner/Company, through its authorized Officer i.e. Area Recovery Manager, Sri. Ashraful Hussain, proceeded to institute a complaint case which was registered as CR Case no. 4201^c/2010.

The Learned Trial Court after appearance of the Respondent in the proceedings of the complaint case, framed a charge under Section 138 of the Negotiable Instruments Act, 1881, against the respondent and the respondent having pleaded not guilty and claimed to be tried, a trial ensued.

During the trial, the Petitioner Company had examined its authorized representative Sri. Champak Kumar Talukdar, in support of his case. Thereafter, the statement of the Respondent, under Section 313 Cr.P.C, was recorded. The Respondent, during his examination under Section 313 Cr.P.C, had admitted that he had obtained 2 (Two) loans from the Petitioner/Company, however, clarified that he had repaid the amounts involved. He further projected that he had issued 2 (Two) blank cheques for the said 2 (Two) loans, in favour of the Petitioner Company, but he had no liability and there is no requirement of payment of the cheque amount.

On conclusion of the trial, upon appreciating the evidences coming on record, the Learned Trial Court, vide its judgment and order dated 17.11.2012, proceeded to hold that the respondent, herein, had committed an offence, under Section 138 of the Negotiable Instruments Act, 1881, and accordingly, proceeded to convict him under Section 138 of the Negotiable Instruments Act, 1881, and sentenced him to undergo Simple Imprisonment for 10 (Ten) months, for the offence, under Section 138 of the Negotiable Instruments Act, 1881, along with further direction to pay the consolidated compensation of Rs. 6,00,000/- (Rupees Six Lakhs Only) to the Petitioner Company. The enhanced compensation was held to have been directed to be paid, in view of the fact that 2 (Two) years had lapsed from the date of institution of the complaint. It was further stipulated that in default of payment of the consolidated compensation, the respondent shall be required to undergo simple imprisonment for another 2 (Two) months.

The respondent, herein, being aggrieved by the judgment and order dated 17.11.2012, passed by the Learned Sub-Divisional Judicial Magistrate (S) (II), Kamrup, in CR Case no. 4201^C/2010, assailed the same, by way of preferring an appeal being Criminal Appeal no. 143(k)/2012. The Appellate Court, upon examining the materials coming on record, during the trial before the Learned Trial Court, proceeded to uphold the decision of the Learned Trial Court that the presumption, permissible to be drawn in favour of the Petitioner/Company, under Section 139 of the Negotiable Instruments Act, 1881, remained un-rebutted. However, by drawing a conclusion that the Petitioner/Company being a juristic person, was not represented by an authorized person and there was no proper complaint, lodged in terms of Section 142 (a) of the Negotiable Instruments Act, 1881, proceeded to interfere with the decision of the Learned Trial Court.

Being aggrieved, the petitioner has instituted the present Revision Petition.

4. The Learned Counsel for the Petitioner, by reiterating the facts noticed, hereinabove, has submitted that the Learned Appellate Court, vide the judgment and order dated 08.04.2014, had affirmed the conclusions, reached by the Learned Trial Court, that the Respondent, herein, was guilty of committing the offence under Section 138 of Negotiable Instruments Act, 1881. He submits that the Learned Appellate Court had recorded a finding,

to the effect that the presumption, in favour of the Petitioner, herein, under Section 139 of Negotiable Instruments Act, 1881, remained un-rebutted by the Respondent, herein. Accordingly, it is submitted that, on merits, the Learned Appellate had concurred with the Learned Trial Court.

5. The Learned Counsel for the Petitioner submits that after affirming the conclusion, drawn by the Learned Trial Court, on merits, the Learned Appellate Court, vide the impugned judgment dated 08.04.2014, proceeded to hold that the Petitioner, herein, being a juristic person, was not represented by an authorized person and accordingly, concluded that there was no proper complaint instituted, in terms of the provisions of Clause (a) of Section 142 of the Negotiable Instruments Act, 1881, and basing on such conclusion, proceeded to set-aside the judgment of conviction and sentencing passed by the Learned Trial Court, on that count alone.

6. The Learned Counsel for the Petitioner, submits, that the conclusions as drawn by the Learned Appellate Court, with regard to the maintainability of the complaint, is clearly perverse. He submits that the complaint was instituted by an authorized Officer of the Petitioner Company. He submits that the Learned Trial Court, after perusing the contents of the complaint, as well as the initial deposition, submitted by the authorized Officer, by way of an affidavit, had proceeded to take cognizance of the matter, under Section 138 of Negotiable Instruments Act, 1881. He further submits that during the trial, the Petitioner Company was represented by Champak Kumar Talukdar, on the basis of a Power of Attorney, executed in his favour, by the Company Secretary of the Petitioner Company, who was empowered for the purpose, by the Board of Directors of the Petitioner Company.

7. The Learned Counsel for the Petitioner further submits that the Learned Trial Court had drawn an issue on the question of maintainability of the complaint. It is submitted that the Learned Trial Court, basing upon the evidence coming on record, had examined the issue and by recording a conclusion to the effect that there was nothing on record to doubt the genuineness of the Power of Attorney (Exhibit-1), held that there was proper authorization by the Petitioner Company, in favour of Sri. Champak Kumar Talukdar, to proceed with the complaint. It is submitted that the Learned Trial Court had accordingly, concluded the

complaint to be maintainable.

8. The Learned Counsel for the Petitioner further submits that even assuming that there existed defects, while instituting the complaint, the said defect is permissible to be rectified, at a subsequent stage. He submits that even if it is held that the complaint was instituted by Sri. Ashraful Hussain, without proper authorization, the said defect was duly rectified and with due authorization, the complaint was proceeded with, on behalf of the Petitioner Company, by Sri. Champak Kumar Talukdar, as the representative of the Company.

9. The Learned Counsel for the Petitioner further submits that from the evidence, adduced by Champak Kumar Talukdar, during the trial, it is evident that he was well aware of the transaction involved and accordingly, was competent to dispose during the trial, on behalf of the Petitioner Company.

10. The Learned Counsel for the Petitioner, by referring to the conclusions drawn by the Learned Appellate Court, with regard to the maintainability of the complaint, has submitted that the Appellate Court, having duly noticed, the Power of Attorney (Exhibit-1) executed by the Company Secretary of the Petitioner Company, and the stipulation contained, therein, that the Company Secretary was authorized by the Board of Directors, to execute the Power of Attorney, without any contrary material available on record, could not have proceeded to doubt the stipulations, as made in the said Power of Attorney. He further, by producing the resolution of the Board of Directors of the Petitioner Company, empowering its Company Secretary to execute the Power of Attorney, in question, submits that no mis-representation was made in the Power of Attorney (Exhibit-1) and further no dispute, with regard to the same, was raised before the Learned Trial Court, by the Respondent, herein.

11. In the above premises, the Learned Counsel for the Petitioner, submits that the impugned judgment and order dated 08.04.2014, passed by the Learned Appellate Court, would mandate an interference from this Court.

12. *Per Contra*, the Learned Counsel for the Respondent has, at the outset, submitted that the conclusions drawn by the Learned Appellate Court, in its judgment and order dated 08.04.2014, on the issue of maintainability of the complaint, was so drawn, strictly on the

basis of the materials coming on record and by application of the relevant provisions of law and accordingly, by the same would not mandate an interference from this Court.

13. The Learned Counsel for the Respondent submits that the complaint was not filed by an authorized person and the provisions of Clause (a) of Section 142, not being satisfied, the Sub-Divisional Judicial Magistrate (SDJM), did not have the jurisdiction to take cognizance in the matter. The Learned Counsel for the Respondent further submits that at the time of institution of the complaint, no authorization executed in a manner known to law, in favour of Sri. Ashraful Hussain, was brought on record. It is submitted that the defect as existing, in filing of the complaint was also not rectified, subsequently.

14. The Learned Counsel for the Respondent submits that subsequently, one Sri. Champak Kumar Talukdar, had deposed during the Trial, as PW-1 and a Power of Attorney was exhibited as Exhibit-1, no resolution of the Board of Directors, empowering the Company Secretary of the Petitioner Company, to execute the Exhibit-1, Power of Attorney, was brought on record.

15. It is submitted that the Company Secretary of a Company cannot execute a Power of Attorney, on behalf of the Company, without being so authorized by the Board of Directors of the Company, in the manner laid down under the Companies Act, 2013. Accordingly, it is highlighted that the authority of the Company Secretary, to execute the Power of Attorney (Exhibit-1), having not been established, the Exhibit-1 cannot have the effect of conferring authority upon Sri. Champak Kumar Talukdar to represent the Petitioner Company in the complaint.

16. In the above premises, the Learned Counsel for the Respondents submits that the judgment and order dated 08.04.2014, passed by the Learned Appellate Court, in Criminal Appeal No. 143^k/2012, would not mandate an interference by this Court.

17. I have heard the Learned Counsel for the parties and perused the materials coming on record.

18. As mentioned, hereinabove, the Learned Trial Court, vide judgment and order dated

17.11.2012, passed in CR Case No. 4201/2010, by the Petitioner Company, to be maintainable, had proceeded to hold that the cheques, in question, were issued by the respondent, herein, for discharge of legally enforceable debt. Accordingly, noticing the ingredients of Section 138 of Negotiable Instruments Act, 1881, to have been satisfied, proceeded to convict the respondent, herein, under Section 138 of Negotiable Instruments Act, 1881, and sentenced him, as noticed, hereinabove. On an appeal being instituted by the respondent, herein, the Appellate Court, vide judgment and order dated 08.04.2014, while affirming the conclusions drawn by the Learned Trial Court, with regard to the commission of offence, under Section 138 of Negotiable Instruments Act, 1881, by the respondent, proceeded to allow the said Appeal, on the ground that the complaint was not maintainable, on account of the same not being demonstrated to have been instituted by an authorized representative of the Petitioner Company. In the present proceedings, the conclusions drawn by the Learned Appellate Court, with regard to the maintainability of the complaint, is under challenge.

19. Having noticed the challenge presented in the present proceedings, this Court would now proceed to examine the judgments passed by the Learned Trial Court and by the Learned Appellate Court, in the matter.

20. The Learned Trial Court, in view of the materials coming on record, had framed the following issues for determination :

“(1) Whether the complaint is maintainable on behalf of the complainant company?”

(2) Whether the accused issued the cheque for the discharge of any legally enforceable debt or liability?”

(3) Whether the cheque was dishonoured for insufficient funds in the account of the accused?”

(4) Whether the accused received the demand notice issued by the complainant regarding the dishonor of the cheque?”

(5) Whether the accused has committed the offence under section 138 of the Negotiable Instruments Act, 1881?”

21. The Learned Tribunal, with regard to the issue of maintainability of the complaint, in the judgment and order dated 17.11.2012, had drawn the following conclusions :

“17. In the instant case at hand, there is no dispute regarding the fact that the complainant is not a company. The defence had in this case merely contended that Shri Ashraful Hussain was not authorized to file this complaint. The defence had not denied the fact that Shri Ashraful Hussain or Shri Champak Talukdar (PWI) are the employees of the complainant.

18. The defence had also not disputed the fact that Shri Champak Kumar Talukdar is not the Branch In Charge of the company or that Shri Ashraful Hussain is not the Area Recovery Manager of the company, but the only contention of the defence is that Shri Ashraful Hussain or Champak Kumar Talukdar, being the employees are not empowered to represent the complainant.

19. The Code of Criminal Procedure does not prescribe the procedure as to who could lodge a complaint on behalf of the company, but section 305 of the CrPC does provide the procedure in case the accused is a corporation. The section 305 CrPC provides that in case the accused is a corporation, then the corporation may appoint a representative for the purpose of inquiry or trial and such appointment need not be under the seal of the corporation. The section 305 CrPC further provides that where a statement in writing purporting to be signed by the Managing Director of the corporation or by any person having the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation is filed, the Court shall presume, unless the contrary is proved that person has been so appointed.

20. Considering that there is no specific provision in the CrPC regarding the procedure to be followed in case the corporation is the complainant, one may draw inferences from section 305 CrPC regarding the manner in which the corporation is to be represented in case the corporation is the complainant. There is no basic difference between the representation of the accused company and the representation of the complainant company in a trial, because in both the instances, the company, being a juristic person is represented at the trial by a natural person appointed in this behalf and does all the acts on behalf of the company and all the acts which are required to be done in the presence of the accused is done in the presence of the said

representative as sufficient compliance of the requirements of the code. In view of the above, the requirement of section 305 CrPC may be imported so as to include within its ambit the representation of the corporation in case the corporation is the complainant.

21. In the instant case at hand the Company Secretary, Shri Vivek Achwal had appointed in writing Shri Champak Kumar Talukdar as the representative of the company; as such it is held that Shri Champak Kumar Talukdar is competent to lodge this complaint on behalf of the company. The power of attorney executed by Shri V. K Achwal authorizing Shri Champak, Kumar Talukdar to represent the company is produced and the same is marked as exhibit 1 and the signature of the Company Secretary is identified and marked as exhibit 1(a). There is nothing on record to doubt the genuineness of the exhibit 1; as such it is held that there is proper authorization by the complainant company to proceed with this complaint. Further the Hon'ble Apex Court had held in MMTC (supra) case that the defect, if any, in authorization can be rectified at later stages also; hence even if it is held that Shri Ashraful Hussain was not authorized to lodge this complaint, then also the said defect is rectified by filing the authorization at later stage.

22. Further the statement of the accused was recorded under section 313 CrPC wherein the accused was asked regarding the representation of the complainant company by Shri Champak Kumar Talukdar to which the accused replied that he does not know about the said fact. The above response of the accused goes on to show that he is not aware as to whether Shri Champak Kumar Talukdar is duly authorized or not. The accused had merely suggested to the witness of the complainant that he is not authorized to represent the complainant to which the witness denied, but there is nothing on record to doubt or disbelieve the said witness regarding his evidence that he is the duly authorized representative of the company.

24. In addition to the above Shri Champak Kumar Talukdar had produced the original dishonoured cheque, and the cheque return memo which shows that he is authorized by the complainant company to lodge this complaint, because otherwise Shri Champak Talukdar could not have in his possession of the above documents in original.

25. In view of the above discussions it is held that Shri Champak Kumar Talukdar is duly authorized by the complainant company; hence this complaint is maintainable.

26. DECISION: The complaint is maintainable."

22. The Learned Appellate Court, on the issue of maintainability of the complaint, in its judgment and order dated 08.04.2014, had drawn the following conclusions :

“18) Keeping in view the above proposition of law let me now turn to the facts and evidence of the instant case. In the case in hand, initially the complaint was filed by one Ashraful Hussain, Recovery Manager of the complainant Company. Later on, evidence was adduced by one Champak Kumar Talukdar (PW-1) being the Branch In-Charge functioning from Guwahati. Evidently there was no authorization in 4 favour of said Ashraful Islam. However, the PW-1 Champak Kumar Talukdar while deposing in Court produced and proved a power of attorney which has been marked as Ext.-1. No doubt, the defect with regard to want of authorization can be rectified even in later stage. Ext.-1 transpires that PW-1 was authorized by Ext.-1, power of attorney, executed by one Mr. Vivek Achwal, Company Secretary of the complainant Company. It has been mentioned in the last para of Ext.-1 that said Vivek Achwal, Company Secretary was authorized by the Board of Directors to execute the power of attorney. During cross-examination the PW-1 stated that he has not produced the resolution of the Board of Director. From the Ext.-1, the power of attorney it appears that Sri Vivek Achwal claimed to have been empowered to execute power of Attorney by the Board's resolution, but admittedly said resolution of the Board of Directors has not been produced in Court. It is settled position that an individual director or functionary of a Company cannot act on its own, unless empowered by Board resolution or by the Memorandum or Articles (Dale Carrington Investment (P) Ltd, (supra). When the accused raised the question of authority of the PW1 to represent the complainant Company, complainant ought to have proved the resolution of the Board empowering Sri Vivek Achwal, in order to dispel the doubt with regard to the authority of Sri Vivek Achwal to execute the Ext. 1. Failure of the complainant to produce the resolution of the Board of Directors empowering Sri Vivek Achwal to execute power of attorney for authorizing the 'de facto complainant', PW1, certainly raises the question, whether the PW-1 was duly authorized or at least rendered the authority to the PW1 to represent the Company doubtful.

19) It is the cardinal principle of the administration of criminal justice that prosecution has to prove its case beyond reasonable doubt and the present case cannot be an exception to that. The decisions cited the by learned counsel for can the respondent/complainant broadly lay down that complaint can be filed by the payee

through its agent or power of attorney holder and there is indeed no quarrel about it. The case of M.M.T.C Ltd, (supra) Jays down that the defect relating to authorization can be rectified even at later stage. In Sankar Finance & Investment, the Apex Court held that payee can lodge complaint through power of attorney holder and the case of Associated Cement lays down the principle that complainant Company authorize different person at different point of time during the proceeding with the leave of the court. Therefore, the authorities cited by the learned counsel for the respondent do not appear to be of any help to the complainant /respondent. If the person executing power of attorney in favour of others, himself lacks the authority to execute the power of attorney, the power of attorney holder cannot claim to have derived any authority under such power of attorney.

21) In view of what has been discussed herein-above I am of the considered view that complainant has failed to prove beyond reasonable doubt that the PW-1 was authorized by the complainant Company being the juristic person. When the natural person 'de facto complainant' had no authority or in other words his authority to represent the Company is doubtful, complaint cannot be held to have been filed by the payee, the Company, as required by Clause (a) of Section 142 of N.I. Act and therefore the impugned judgment and order of conviction and sentence liable to be set aside on this count alone.

26) In any view of the matter when the complainant being a juristic person was not represented by an authorized person and there was no proper complaint in terms of clause (a) of Section 142 of Negotiable Instrument Act, the impugned judgment and order of conviction and sentence is liable to be set aside on that count alone."

23. This Court from the materials placed on record, finds that the complaint was filed in the name of the Petitioner Company, through one Sri. Ashraful Hussain, as its authorized Officer. The authorized Officer was projected as the Area Recovery Manager of the Petitioner Company. In the initial deposition of the said authorized Officer filed on affidavit, it was projected that be being the Area Recovery Manager of the Company, he was authorized to file the Complaint. However, no letter or authority or any other instrument, authorizing said Sri. Ashraful Hussan to the Petitioner Company, was brought on record. Thereafter, during the trial, the Petitioner Company is found to have been represented by one Sri. Champak Kumar Talukdar, who was the Branch In-Charge (GWAH-I) of the Petitioner Company.

24. Sri. Champak Kumar Talukdar, while deposing as PW-1, had exhibited a Power of Attorney, dated 22.03.2012, executed in his favour, to represent the Petitioner Company, by the Company Secretary of the Petitioner Company. A perusal of the Exhibit-1, Power of Attorney, would reveal that the Board of Director of the Petitioner Company, had duly conferred powers on the said Company Secretary, to execute the Power of Attorney (Exhibit-1). During the cross-examination of PW-1 by the Respondent, herein, it was elicited that no authority letter, authorizing Sri. Ashraful Hussain, who was working as the Regional Credit Head of the Petitioner Company, was brought on record.

25. With regard to the Exhibit-1, it was elicited that the Company Secretary was authorized to give Power of Attorney, but, such resolution was filed in the case. During the examination of the Respondent, herein, under Section 313 Cr.P.C, to a question put to him that PW-1, Sri. Champak Kumar Talukdar had deposed that he was the Branch In-Charge and was authorized to prosecute the complaint, the Respondent had responded by stating "I can't say". No further statement on the issue is seen to have been made by the respondent, herein.

26. Having perused the materials available on record, with regard to the issue of maintainability of the complaint, this Court finds that although initially, while filing of the complaint, an authority letter, issued to the authorized Officer Sri. Ashraful Hussain is not found on record, the said defect was during the continuance of the proceedings rectified and Exhibit-1 was brought on record by PW-1.

27. The Hon'ble Supreme Court, with regard to the issue arising in the present proceedings, in its decision in the case of **MMTC Ltd. & Anr. Vs. Medchl Chemicals and Pharma (P) Ltd. & Another** reported in **(2002) 1 SCC 234**, held as follows ;

"9. In the impugned judgment it has been held that the complaints filed by Mr Lakshman Goel were not maintainable. It was noticed that in those two complaints, at a subsequent stage, one Mr Sampath Kumar, the Deputy General Manager of the appellant was allowed to represent the appellants. The High Court held that it is only an Executive Director of the Company who has the authority to institute legal proceedings. It is held that the complaint could only be filed by a person who is in charge of or was responsible to the Company. It is held that authorisation must be on the date when the complaint is filed and a subsequent authorisation does not validate the complaint. It is held that the absence of a complaint by a duly delegated authority is not a mere defect or irregularity which could be cured subsequently. It is held that if

the record does disclose any authorisation, then taking cognizance of the complaint was barred by Section 142(a) of the Negotiable Instruments Act. It has been held that the Senior Manager (who had lodged the complaints) and the Deputy General Manager (who was substituted) had not been authorised by the Board of Directors to sign and file the complaint on behalf of the Company or to prosecute the same. It is held that the Manager or the Deputy General Manager were mere paid employees of the Company. It is then held as follows:

“Therefore, it is clear that the legal position as crystallised by the rulings is to the effect that a complaint under Section 138 of the Negotiable Instruments Act can be filed for and on behalf of a body such as corporation, who has only artificial existence through a particular mode and when that mode is not followed, any proceedings initiated or any complaint filed will be vitiated from its very inception. In my opinion, here, the complaint is signed and presented by a person, who is neither an authorised agent nor a person empowered under the articles of association or by any resolution of the Board to do so. Hence, the complaint is not maintainable. The taking of cognizance of such a complaint is legally not acceptable. Hence, these two complaints filed for and on behalf of M.M.T.C. Limited against the petitioners herein, which were taken on file in CCs Nos. 3324 and 3325 of 1995 are not maintainable at all and that cognizance of the said complaints ought not to have been taken by the Magistrate.”

10. *In our view the reasoning given above cannot be sustained. Section 142 of the Negotiable Instruments Act provides that a complaint under Section 138 can be made by the payee or the holder in due course of the said cheque. The two complaints, in question, are by the appellant Company who is the payee of the two cheques.*

11. *This Court has, as far back as, in the case of 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.*

12. *In the case of Associated Cement Co. Ltd. v. Keshvanand [(1998) 1 SCC 687 : 1998 SCC (Cri) 475] it has been held by this Court that the complainant has to be a corporeal person who is capable of making a physical appearance in the court. It has been held that if a complaint is made in the name of an incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the court. It is held that the court looks upon the natural person to be the complainant for all practical purposes. It is held that when the complainant is a body corporate it is the de jure complainant, and it must necessarily associate a human being as de facto complainant to represent the former in court proceedings. It has further been held that no Magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. It has been held that there may be occasions when different persons can represent the company. It has been held that it is open to the de jure complainant company to seek permission of the court for sending any other*

person to represent the company in the court. Thus, even presuming, that initially there was no authority, still the company can, at any stage, rectify that defect. At a subsequent stage the company can send a person who is competent to represent the company. The complaints could thus not have been quashed on this ground."

28. The Hon'ble Supreme Court in its decision in the case of ***National Small Industries Corporation Ltd. Vs. State (NCT of Delhi) & Others*** reported in **(2009) 1 SCC 407**, held as follows :

"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. Section 142 of the NI Act does not specify who should represent 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.

15. Section 138 of the NI Act mandates that the payee alone, whether a corporeal person or an incorporeal person, shall be the complainant. Section 200 of the Code contemplates only a corporeal person being a complainant. It mandatorily requires the examination of the complainant and the sworn statement being signed by the complainant. If Section 142 of the NI Act and Section 200 of the Code are read literally, the result will be: (a) the complainant should be the payee of the cheque; and (b) the complainant should be examined before issuing process and the complainant's signature should be obtained on the deposition. Therefore, if the payee is a company, an incorporeal body, the said incorporeal body can alone be the complainant. The mandatory requirement of Section 200 of the Code is that a Magistrate taking cognizance of an offence on complaint, shall examine upon oath the complainant and that the substance of such examination reduced to writing shall be signed by the complainant. An incorporeal body can obviously neither give evidence nor sign the deposition. If literal interpretation is applied, it would lead to an impossibility as an incorporeal body is incapable of being examined. In the circumstances, a harmonious and purposive interpretation of Section 142 of the NI Act and Section 200 of the Code becomes necessary.

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.

17. *We are fortified in our view by two decisions of this Court. In Associated Cement Co. Ltd. v. Keshvanand [(1998) 1 SCC 687 : 1998 SCC (Cri) 475] this Court held as follows: (SCC pp. 694-95, paras 22-23)*

“22. Chapter XV of the new Code contains provisions for lodging complaints with Magistrates. Section 200 as the starting provision of that Chapter enjoins on the Magistrate, who takes cognizance of an offence on a complaint, to examine the complainant on oath. Such examination is mandatory as can be discerned from the words ‘shall examine on oath the complainant ...’. The Magistrate is further required to reduce the substance of such examination to writing and it ‘shall be signed by the complainant’. Under Section 203 the Magistrate is to dismiss the complaint if he is of opinion that there is no sufficient ground for proceeding after considering the said statement on oath. Such examination of the complainant on oath can be dispensed with only under two situations, one if the complaint was filed by a public servant, acting or purporting to act in the discharge of his official duties and the other when a court has made the complaint. Except under the above understandable situations the complainant has to make his physical presence for being examined by the Magistrate. Section 256 or Section 249 of the new Code clothes the Magistrate with jurisdiction to dismiss the complaint when the complainant is absent, which means his physical absence.

23. The above scheme of the new Code makes it clear that complainant must be a corporeal person who is capable of making physical presence in the court. Its corollary is that even if a complaint is made in the name of an incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the court and it is that natural person who is looked upon, for all practical purposes, to be the complainant in the case. In other words, when the complainant is a body corporate it is the de jure complainant, and it must necessarily associate a human being as de facto complainant to represent the former in court proceedings.”

(emphasis supplied)

18. *In MCD v. Jagdish Lal [(1969) 3 SCC 389] , the facts were that Delhi Municipal Corporation had by a resolution authorised the Municipal Prosecutor to launch a*

prosecution under Section 20 of the Prevention of Food Adulteration Act. Accordingly, one S.S. Mathur, the Municipal Prosecutor, filed a complaint against the respondent. The learned Magistrate acquitted the respondent. Section 417 of the old Code provided that where an order of acquittal was passed in any case instituted upon complaint by the High Court granting special leave to appeal from the order of acquittal on an application made to it by the complainant, the complainant may present an appeal to the High Court. Delhi Municipal Corporation made an application to the High Court for special leave under Section 417 against the order of acquittal. The application was granted. When the appeal came up for hearing, the respondent raised a preliminary objection that as the complaint had been filed by S.S. Mathur, the Municipal Prosecutor, he alone was competent to file the appeal and not the Municipal Corporation. It was contended that as the application seeking leave was not filed by the complainant but by the Municipal Corporation, the appeal itself was not maintainable. The said contention was negated by this Court. This Court expressed its inability to accept the contention that as S.S. Mathur, Municipal Prosecutor, was the complainant, Delhi Municipal Corporation was not competent to make an application for special leave. This Court noted that S.S. Mathur, Municipal Prosecutor, filed the complaint under the authority given to him under the resolution of the Municipal Corporation. This Court held that in filing the complaint, S.S. Mathur was not acting on his own personal behalf but was acting as an agent of Delhi Municipal Corporation and therefore, it must be deemed that Delhi Municipal Corporation was the complainant in the case; and that as S.S. Mathur was only acting in a representative capacity and as Delhi Municipal Corporation was the complainant, the application for special leave filed by the Municipal Corporation was properly instituted.

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."*

29. The Hon'ble Supreme Court in its decision in the case of ***TRL Krosaki Refractories Limited Vs. SMS Asia Private Limited and Another***, reported in **(2022) 7 SCC 612**, had held as follows :

"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 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)

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 powerof-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.”

30. Applying the above noted decisions of the Hon’ble Supreme Court, to the facts of the present case, this Court finds that the complaint was filed in the name of the Petitioner Company and the Petitioner Company was represented by Sri. Ashraful Hussain, who was the Area Recovery Manager of the Petitioner Company. Further, from the initial deposition of the authorized Officer, in Affidavit, this Court finds that he was well conversant with the transactions which led to the issuance of the cheques in question, by the respondent. The complaint in the present matter is found to have satisfied the requirements of Section 142 of Negotiable Instruments Act, 1881. Accordingly, no error is found in the Learned Sub-Divisional Judicial Magistrate, in taking cognizance of the same.

31. This Court, in view of the decision of the Hon’ble Supreme Court noticed, hereinabove, finds that it is permissible to change the representative of a Company, during the pendency of the complaint. Sri. Champak Kumar Talukdar had deposed, during the Trial as PW-1, on being empowered by way of a Power of Attorney (Exhibit-1) executed in his favour, by an authorized Officer of the Petitioner Company i.e. its Company Secretary. The said position has not been also found to have been disputed by the respondent, herein, during trial. The fact that Champak Kumar Talukdar was not authorized to depose as PW-1, during the trial, is also not found to have been established by the respondent, herein, during the trial.

32. In view of the conclusions drawn by this Court, hereinabove, as well as basing on the decisions of the Hon’ble Supreme Court noticed, hereinabove, this Court finds that the

Learned Trial Court had drawn its conclusions strictly basing on the materials coming on record during the trial and the same is supported by the decision holding the field of the Hon'ble Supreme Court. The Appellate Court is found to have misdirected itself and proceeded to draw conclusions ignoring the evidences coming on record, as well as the settled position of law, on the issue. Accordingly, the same would not mandate acceptance of this Court.

33. Accordingly, the conclusions drawn by the Learned Appellate Court, vide its judgment and order dated 08.04.2014, on the issue of the maintainability of the complaint petition, stand set aside. The conclusions drawn by the Learned Appellate Court, with regard to the commission of the offence by the Respondent, herein, under Section 138 of Negotiable Instruments Act, 1881, stands affirmed.

34. In view of the above discussion, the judgment and order dated 17.11.2012, passed by the Court of the Learned Sub-Divisional Judicial Magistrate (SDJM) in CR Case No. 4201/2010, convicting the respondent, herein, under Section 138, stands restored and affirmed.

35. Having drawn the above conclusion, this Court notices that the complaint case was instituted by the Petitioner Company in the year 2010, and thereafter, the appeal was instituted in the year 2012. The present Revision Petition was instituted by the Petitioner Company in the year 2014. Considering the long lapse of time occasioning in conclusion of the proceedings involved, this Court if of the considered view that the sentencing of the petitioner as ordered by the Learned Trial Court, vide its judgment and order dated 17.10.2012, would mandate a modification. Accordingly, the sentencing of imprisonment of the petitioner stands interfered with.

36. In view of the above, the respondent is sentenced to pay consolidated compensation of Rs. 6,00,000/- (Rupees Six Lakhs Only) to the petitioner, herein, in default to undergo simple imprisonment for 3 (Three) months for the offence under Section 138 of the Negotiable Instruments Act, 1881.

37. The Respondent to appear before the Learned Trial Court for depositing the

consolidated compensation of Rs. 6,00,000/- (Rupees Six Lakhs Only), within a period of 4 (Four) months from today.

38. With the above observations and directions, the present Revision Petition stands disposed of.

39. Registry to send back the Records to the Learned Trial Court, forthwith.

JUDGE

Mayuraks
hee Kalita

Comparing Assistant