

[2022 LiveLaw \(SC\) 196](#)

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
N.V. RAMANA, CJI; A.S. BOPANNA, J; HIMA KOHLI, J.
February 22, 2022**

**CRIMINAL APPEAL NO. OF 2022
(Arising out of SLP (Crl.) No.3113 of 2018)**

M/s TRL Krosaki Refractories Ltd. *Versus* M/s SMS Asia Private Limited & Anr.

Negotiable Instruments Act, 1881 - Section 138 and 142 - When a company is the payee of the cheque based on which a complaint is filed under Section 138 of N.I. Act, the complainant necessarily should be the Company which would be represented by an employee who is authorized. *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 authorized person who has knowledge, would be sufficient - 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 authorized 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. (*Para 17*)

Negotiable Instruments Act, 1881 - Section 138 and 142 - A.C. Narayanan vs. State of Maharashtra & Anr. (2014) 11 SCC 790 - 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 (*supra*) 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. 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 authorized 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 authorized 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 N.I. Act was satisfied. (Para 17, 14)

Negotiable Instruments Act, 1881 - Section 138 and 142 - Code of Criminal Procedure, 1973 - Section 482 - 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.
(Para 17)

(Arising out of impugned final judgment and order dated 14-12-2017 in CRLMC No.1210/2017 passed by the High Court of Orissa at Cuttack)

For Petitioner(s) Mr. Ashok K. Parija, Sr.Adv. Mr. Gaurav Khanna, AOR Mr. Arnav Behera, Adv. Ms. Sadhvi Swarup, Adv.

For Respondent(s) Mr. Arunav Patnaik, Adv. Mr. Santosh Kumar - I, AOR

J U D G M E N T

A.S. Bopanna, J.

1. Leave granted.

2. The appellant is assailing the judgment dated 14.12.2017 passed by the High Court of Orissa at Cuttack in CRLMC No.1210 of 2017. Through the said judgment, the High Court while disposing of the petition has quashed the order dated 05.11.2015 passed by the learned SDJM, Jharsuguda by which cognizance was taken and summons was issued in I.C.C. Case No.422 of 2015. The appellant who is the complainant in I.C.C. Case No.422 of 2015 is therefore before this Court, claiming to be aggrieved by the said judgment.

3. The brief facts are that the respondent herein had issued seven cheques dated 13.03.2015, in all amounting to Rs.1,10,00,000/(Rupees one crore ten lakhs) in favour of the appellant company. On presentation, the said cheques were dishonoured by the Bank and returned with the endorsement, 'account closed'. The appellant in that view issued notices dated 14.04.2015 through registered post, acknowledgement due. Though the notices were received on 16.04.2015 as per the postal acknowledgement, the respondent failed to comply with the demand or respond to the same. In that view, the appellant filed the complaint before the learned SubDivisional Judicial Magistrate, ('SDJM' for short) Panposh, Uditnagar Rourkela

under Section 138 and 142 of Negotiable Instruments Act, 1881 (for short 'N.I. Act'). The said complaint was registered based on the affidavit filed on behalf of the complainant, in lieu of oral sworn statement. The learned SDJM on being satisfied that there is sufficient material and the complaint under Section 138 of N.I. Act against the accused is in accordance with law, took cognizance of the complaint and directed summons to the respondent accused, vide order dated 05.11.2015.

4. The respondent herein however filed a petition in CRLMC No.1210 of 2017 under Section 482 of the Criminal Procedure Code (for short 'Cr.P.C.') before the High Court claiming to be aggrieved by the order dated 05.11.2015. The respondent, in the said petition had contended that the complaint filed was by an incompetent person without the requisite averments in the complaint, despite which the learned SDJM had taken cognizance and issued summons. In that regard, it was contended that Mr. Subhasis Kumar Das, General Manager (Accounting) who had filed the complaint representing the complainant company, neither had knowledge about the alleged transaction, nor had he witnessed the same. In that light, the respondent had contended that the order taking cognizance and the summons issued to them, is liable to be quashed. The High Court, accepting the said contention and placing reliance on the judgment of this Court in **A.C. Narayanan vs. State of Maharashtra & Anr.** (2014) 11 SCC 790 has held that there is no mention in the complaint or affidavit as to when and in what manner the company had authorized its General Manager (Accounting) to represent the company to file the complaint. It is further held that there is no averment in the complaint as to whether the General Manager (Accounting) had knowledge about the transaction or he was a witness to the transaction. It was also held, neither any resolution of the Board of Directors of the complainant company nor any authorisation of the company in favour of the person representing it in the complaint was filed for perusal of the Magistrate. Only an authorisation letter issued by the Managing Director of the complainant company in favour of the General Manager (Accounting) was produced and the said authorisation does not indicate whether the Board of Directors had authorised the Managing Director to subdelegate his powers to the General Manager (Accounting) to file the complaint on behalf of the company.

5. Mr. Ashok K. Parija, learned senior counsel appearing on behalf of the appellant while assailing the judgment passed by the High Court, would contend that the High Court has utterly misconstrued the principle enunciated in **A.C. Narayanan** (supra) to nonsuit the appellant. It is contended that in the said decision, while considering the nature of the complaint filed based on the power of attorney executed by one individual in favour of another individual to conduct the case, the requirement therein has been stated. Even in that context the High Court has not properly appreciated the facts involved in the instant case since the complaint was as per the observations made in **A.C. Narayanan** (supra). It is contended that the order passed by the learned

SDJM dated 05.11.2015 taking cognizance would indicate that the learned Magistrate having perused the complaint and the entire record, was satisfied that there is sufficient material for issuance of summons. In that background, the list of documents and the documents are referred to. The agreement dated 18.07.2014, entered into between the appellant and respondent would disclose that Mr. Subhasis Kumar Das, General Manager (Accounting) who had represented the company in the complaint, was a witness to the said agreement. He had also signed the reconciliation statement and has despatched the notice to the respondent when the cheques were dishonoured. In that view, the company was represented by a competent person who had knowledge of the transaction. The verifying affidavit enclosed with the complaint also specified that he had knowledge and that the complaint was based on the relevant documents. In addition, the said Mr. Subhasis Kumar Das, General Manager (Accounting) in the affidavit filed as his sworn statement, had explicitly stated that he is the authorized representative of the complainant company and has filed the complaint against the accused persons. Learned senior counsel would also point out that in addition to the fact that he was a Senior Managerial Officer of the appellant company, Mr. Subhasis Kumar Das was also authorized by the Managing Director on 23.05.2015, to initiate the legal proceedings. The Managing Director on the other hand, was authorized by the Chairman based on the approval of the Board of Directors. In that view, it is contended that the complaint was filed in accordance with law and the learned Magistrate having applied his mind, had taken cognizance which was quashed by the High Court without appropriately applying its mind.

6. Mr. Santosh Kumar, learned counsel for the respondent would however, seek to sustain the judgment passed by the High Court. It is contended that the High Court having noted the judgment in **A.C. Narayanan** (supra) and also the judgments of the Orissa High Court had arrived at the conclusion that the complaint filed did not satisfy the requirement of Section 142 of N.I. Act as the complaint was not filed by a person who was authorized by the company. It is further contended that in **A.C. Narayanan** (supra) this Court has held that there should be explicit averment to the effect that the person filing the complaint is authorized by the complainant and has knowledge of the transaction in question so as to maintain the complaint. It is contended that since the High Court has arrived at its conclusion by relying on a decision rendered by this Court, such a decision would not call for interference in this appeal.

7. Having noted the sequence of events and the rival contentions put forth by the learned counsel for the parties, the solitary issue for consideration herein is as to whether the complaint filed by the appellant herein under Section 138 of N.I. Act is in accordance with the requirement under Section 142 of the N.I. Act. The relevant provision reads as hereunder:

“142. **Cognizance of offences.**—[(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) xxxxxxxxxxxx

(c) xxxxxxxxxxxx”

8. In that background, a perusal of the complaint (Annexure P14) would disclose that the complainant named therein is M/s. TRL Krosaki Refractories Limited through its General Manager (Accounting) Subhasis Kumar Das. A perusal of the cheques (Annexures P3 to P9) which are the subject matter of the said complaint under Section 138 of NI Act would disclose that the “payee” named in the said cheques is M/s. TRL Krosaki Refractories Limited. If that be the position, the requirement as contemplated under Section 142 (1) (a) of NI Act that the complaint ought to be in writing and that it should be filed by the payee or the holder in due course, stands satisfied. The issue raised is that the complaint filed by Mr. Subhasis Kumar Das, General Manager (Accounting) on behalf of the company is not competent for want of authorisation and that there is no averment with regard to his knowledge about the transaction. On this aspect, strong reliance is placed by the learned counsel for the respondents on **A.C. Narayanan** (supra). Further, the judgment passed by the High Court is also entirely based on the guidelines laid down in the said decision.

9. To place the matter in perspective, it would be necessary for us to take note of the circumstances under which the consideration arose in **A.C. Narayanan** (supra). In that regard, it is noticed that this Court while considering the scope of Section 142 (1)(a) of N.I. Act in the case of **M/s. M.M.T.C. Ltd. vs. Medchi Chemicals and Pharma (P) Ltd.**, (2002) 1 SCC 234, had taken note of an earlier decision of this Court in **Vishwa Mitter vs. O.P. Poddar**, (1983) 4 SCC 701 wherein it was held 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 was further held in **Vishwa Mitter** (supra) that if any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, then the complaint requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by such statute. In that circumstance, it was held that the only eligibility criteria prescribed by Section 142 of N.I. Act is that the complainant must be by the payee or the holder in due course. However, in a subsequent decision in **Janaki Vashdeo Bhojwani & Anr. vs. Indusind Bank Ltd. & Ors.** (2005) 2 SCC 217, while considering the right of a power of attorney holder to act on behalf of the principal in a civil proceeding, the provision contained in Order III Rule 1 and 2 of CPC was kept in view and it was held that if the power of attorney holder has rendered some acts in

pursuance of the power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal is entitled to be cross-examined. The said two decisions which were rendered by Division Benches were assumed to be in conflict with each other by another Division Bench while considering **A.C. Narayanan** (supra) and therefore it desired clarification.

10. In that view, the matter in **A.C. Narayanan** (supra) was referred to a Bench of three Hon'ble Judges. The said Bench after holding that the said two judgments of this Court are not in conflict with each other has considered the scope and requirement of Section 142 (1)(a) of N.I. Act and formulated the questions for consideration as contained in para 21 of the judgment which read as hereunder:

“21. In terms of the reference order, the following questions have to be decided by this Bench:

21.1. Whether a powerofattorney holder can sign and file a complaint petition on behalf of the complainant? Whether the eligibility criteria prescribed by Section 142(a) of the NI Act would stand satisfied if the complaint petition itself is filed in the name of the payee or the holder in due course of the cheque?

21.2. Whether a powerofattorney holder can be verified on oath under Section 200 of the Code?

21.3. Whether specific averments as to the knowledge of the powerofattorney holder in the impugned transaction must be explicitly asserted in the complaint?

21.4. If the powerofattorney holder fails to assert explicitly his knowledge in the complaint then can the powerofattorney holder verify the complaint on oath on such presumption of knowledge?

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

The consideration made in paras 29 to 30 would be relevant to be noted, which read as hereunder:

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

required, the Magistrate may call upon the complainant to remain present before the court and examine the complainant and/or his witness upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the NI Act.

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

The answer to the question raised for consideration is contained in para 33 which read as hereunder:

33. While holding that there is no serious conflict between the decisions in M.M.T.C. and Vasheo Bhojwani, 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 powerofattorney holder can depose and verify on oath before the court in order to prove the contents of the complaint. However, the powerofattorney 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 powerofattorney holder in the said transaction explicitly in the complaint and the powerofattorney 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 of his witness upon oath for taking the decision whether or not to issue process on the complaint under Section 138 of the NI Act.

33.5. The functions under the general power of attorney cannot be delegated to another person without specific clause permitting the same in the power of attorney. Nevertheless, the general power of attorney itself can be cancelled and be given to another person.”

(Emphasis supplied)

11. A cumulative perusal of the facts of the instant case would indicate that the requirement as indicated in **A.C. Narayanan**, (supra) are in fact satisfied. Firstly, as noted above, the complaint was filed in the name of the company i.e., “the payee”, through Mr. Subhasis Kumar Das, General Manager (Accounting). The authorisation dated 23.05.2015 by the Managing Director in his favour (Annexure P17) discloses

that Mr. Priyabrata Panda, Managing Director of the appellant company had authorised Mr. Subhasis Kumar Das, General Manager (Accounting) to institute criminal proceedings, including proceedings under the provisions of the N.I. Act and civil proceedings on behalf of the company against M/s. SMS Asia Private Limited (respondent), to represent the company and take all necessary actions in the matter in learned SDJM's Court. The specimen signature of Mr. Subhasis Kumar Das has also been attested by the Managing Director. The Managing Director apart from himself being the key managerial personnel of the appellant company, has also been delegated the power by the Board of Directors through the document dated 06.04.1998 (Annexure P16). Through the said document the Managing Director has been delegated, in general, all powers necessary for the management and operation of the company and it has been specified among others, to exercise the power relating to important issues affecting the company's land and property. Through the said document, the Managing Director is also empowered to delegate where necessary and to the extent required, any of the powers delegated to him, to his subordinate officers. The above noted documents would disclose that the complaint under Section 138 NI Act was filed on behalf of the "payee" company with due authorisation.

12. The next aspect on which the High Court has interfered is on accepting the contention that there is no averment in the complaint as to whether the General Manager (Accounting) had any knowledge about the transaction or he was a witness to the transaction. On the said aspect it is noted that the transaction between the parties is based on the agreement dated 18.07.2014 (Annexure P1). The said document depicts, below the signature of the executives representing the appellant and the respondent company, a witness each from either side have appended their signatures. The witness on behalf of the appellant company is none other than Mr. Subhasis Kumar Das who was at that point in time, designated as General Manager (Commercial). Further, the document for reconciliation of account spanning the period from 01.04.2011 to 30.09.2014, as carried out on 28.10.2014, depicts that the same was attested by the representatives of both the companies. The appellant company is represented by Mr. Subhasis Kumar Das. That apart, when the cheques were dishonoured, it was Mr. Subhasis Kumar Das, General Manager (Accounting) who had issued the notices (Annexure P11, 1213) on behalf of the appellant company, to the respondent company. The said documents would indicate that the person who had knowledge of the transaction and was witness to it, has been authorized and has instituted the complaint on behalf of the company.

13. Apart from the factual aspects as stated in the complaint, relating to the transaction, the complaint as also the affidavit supporting the complaint contain averments regarding authorization in favour of and knowledge on the part of Mr. Subhasis Kumar Das, which read as hereunder:

“That, the complainant Company incorporated under the companies Act 1956 and having registered office At/PO/PSBelpahar, Dist.Jharsuguda, (Odisha) **represent through its General Manager (Accounting), Shri Subhasis Kumar Das**, aged about 47 years, S/O Shri Gopal Chandra Das **and also authorize by the Company to file this complaint.**”

The verifying affidavit reads as hereunder:

“I, Sri. Subhasis Kumar Das, aged about 47 years, S/o. Gopal Chandra Das **General Manager (Accounting) of M/s. TRL Krosaki Refractories Limited**, At / PO /PSBelpahar, Dist.Jharsuguda (Odisha), do hereby solemnly affirm and state as follows:

1. That, **I am the General Manager (Accounting) of M/s. TRL Krosaki Refractories Limited**, At / PO / PSBelpahar, Dist.Jharsuguda (Odisha) **and competent to file this complaint petition.**
2. That, **facts stated above in this complaint petition from Para : 1 to 13 are true to the best of my knowledge, belief and basing on the relevant documents.**”

In addition, the affidavit filed in lieu of the oral sworn statement before the learned SDJM to enable cognizance to be taken contains the averment as follows:

“That I am the authorized representative of the complainant Company incorporated under the companies Act 1956 and having registered office At/PO/PSBelpahar, Dist. Jharsuguda (Odisha) **has filed this complaint petition against the accused person.**”

(Emphasis supplied)

14. A meaningful reading of the above would indicate that the company having authorized 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 authorized 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 authorized 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 N.I. Act was satisfied. In **Vinita S. Rao vs. Essen Corporate Services (P) Ltd.** (2015) 1 SCC 527, to which one of us (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.

15. 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** (supra) has taken the center 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. In this regard in **Samrat Shipping Co. Pvt. Ltd. Vs. Dolly George** (2002) 9 SCC 455, 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:

“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 authorized 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)

16. Further, in **National Small Industries Corporation Ltd. Vs. State (NCT of Delhi) and Ors.** (2009) 1 SCC 407, 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) of Cr.PC, has exhaustively considered the validity of a complaint under Section 138 of N.I. Act and the satisfaction of the requirement under Section 142 thereof. In the said context this Court has held as hereunder:

“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 nonemployee authorized 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 favor 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)

17. 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 N.I. Act, the complainant necessarily should be the Company which would be represented by an employee who is authorized. *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 authorized 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 (supra) 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 authorized 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 authorized 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. Pvt. Ltd.** (supra), 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.

18. In that view of the matter, we are of the opinion that the High Court was not justified in entertaining the petition filed under Section 482 of Cr.PC and quashing the order dated 05.11.2015, taking cognizance of the complaint filed by the appellant.

Accordingly, we pass the following order;

- (i) The judgment dated 14.12.2017 passed in CRL. MC. No. 1210 of 2017 by the High Court of Orissa, Cuttack is set aside.
- (ii) The complaint in I.C.C Case No. 422 of 2015 is restored to the file of SDJM, Jharsuguda with a direction to list the case on 15.03.2022 as the first date for appearance of the parties.
- (iii) The respondent who has appeared herein and is represented by a counsel shall appear on the said date before the learned Magistrate in continuation of the proceedings wherein summons had already been issued, without expecting fresh summons to be issued.
- (iv) Keeping in view the fact that the complaint is of the year 2015, the same shall be proceeded with further expeditiously and be concluded in a period not later than six months from the first date indicated above.
- (iv) The appeal is accordingly allowed with cost quantified at Rs. 1,00,000/(Rupees one lakh only) payable by the respondent to the appellant.

19. All pending applications, if any, shall stand disposed of.