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AFR

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Court No. - 92

Case :- APPLICATION U/S 482 No. - 18652 of 2016

Applicant :- Ashok Sharma

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Amit Daga, Ashish Kumar Singh

Counsel for Opposite Party :- G.A., Dinkar Lal, Dipendra Kumar, Pradeep Kumar Rai, Satendra Kumar, Suyash Agarwal

With

Case :- APPLICATION U/S 482 No. - 12562 of 2016

Applicant :- Narendra Singh Pawar

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Amit Daga

Counsel for Opposite Party :- G.A., Dinkar Lal, Dipendra Kumar, Pradeep Kumar Rai, Suyash Agarwal, Swetashwa Agarwal

With

Case :- APPLICATION U/S 482 No. - 9430 of 2016

Applicant :- Yatendra Singh Pawar

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Amit Daga

Counsel for Opposite Party :- G.A., Ajay Kumar Singh, Ashish Kumar Singh, Dinkar Lal, Dipendra Kumar, Pradeep Kumar Rai, Suyash Agarwal, Swetashwa Agarwal

Hon'ble Prashant Kumar, J.

1. Heard Sri Amit Daga, learned counsel for applicant, Sri Swetashwa Agarwal, learned counsel for opposite party no.2 and Sri Shashidhar Pandey, learned AGA for the State.

2. By means of this application under Section 482 Cr.P.C. the applicant has prayed for quashing the summoning order dated 16.02.2016 passed by Additional Chief Judicial Magistrate, Court No.1, Muzaffarnagar in Criminal Complaint Case No.49/9 of 2016 (whereby the trial court summoned accused applicant for the offence punishable under Section 138 of Negotiable Instruments Act) as well as entire proceedings of Criminal Complaint Case No.49/9 of 2016 (Uttarakhand Engineering Products Pvt. Ltd. Vs. M/s. Trimurti Concast Pvt. Ltd. and others), under Section 138 of

N.I.Act, Police Station New Mandi, District Muzaffarnagar, pending in the Court of Additional Chief Judicial Magistrate, Court No.1, Muzaffarnagar.

3. Brief facts of the case are that Uttarakhand Engineering Products Private Limited (here-in-after for the sake of brevity has been referred to as “Complainant”) is engaged in the business of Sponge Iron and Silicon Manganese. M/s Trimurti Concast Pvt. Ltd. placed an order for supply of Sponge Iron and Silicon Manganese, the complainant supplied the product, thereafter, M/s Trimurti Concast Pvt. Ltd gave a cheque of Rs.1,07,05,318.00 on 16.07.2015 bearing cheque no.000441 drawn in HDFC Bank, 53/4-A, Bagh Kambalwala, Jansath Road, New Mandi Muzaffarnagar. This cheque was presented on 12.10.2015 and the same was bounced because of insufficiency of funds, thereafter, the complainant gave a legal notice on 23.10.2015 within stipulated time. When, M/s Trimurti Concast Pvt. Ltd did not pay the said amount the complainant was left with no option but to file a complaint under Section 138 of Negotiable Instruments Act before Chief Judicial Magistrate, Muzaffarnagar. The evidence was filed by way of an affidavit and also filed all relevant documents, thereafter, the Court was pleased to issue summons on 16.02.2016.

4. Once the summons were issued, the applicant herein, Ashok Sharma, who was signatory of the cheque filed the instant application under Section 482 Cr.P.C. in which this Court vide order dated 05.07.2016 issued notices to the opposite party no.2 and stayed the further proceedings of the aforesaid complaint case, therefore, the trial could not proceed since last 8 years. Now the pleadings are complete and the matter is ripe for hearing.

ARGUMENT ON BEHALF OF THE APPLICANT

5. Learned counsel for the applicant submits that prosecution, initiated under Section 138 of N.I.Act by and on behalf of the company cannot be initiated through power of attorne. It is initiated by power of attorney HOLDER, then the power of attorney and letter of authorized signatory must be on record of trial court. There was not even a single authorization letter, power of attorney or letter bearing seal and signatures of the Board of

Directors of the Company, which authorize to institute complaint on behalf of the complainant is available before the trial Court, therefore, the complaint filed by the complainant is not maintainable

6. He further submits that complaint does not fulfil the basic ingredients of Section 141 of N.I.Act. The complaint as well as the statements are absolutely silent on the point, that on the date of issuance of the cheque or on the date on which the cheque was dishonoured, who was in charge or responsible, and looking after day to day affairs of the company. Hence, the complaint against the applicant is not maintainable.

7. In support of his argument learned counsel for the applicant placed reliance on the judgement of Hon'ble Supreme Court in the case of **A.C. Narayan vs. State of Maharashtra and another**¹ wherein the Court had held as follows:-

“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 N.I. 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.

In view of the discussion, we are of the opinion that the attorney holder cannot file a complaint in his own name as if he was the complainant, but he can initiate criminal proceedings on behalf of his principal. We also reiterate that where the payee is a proprietary concern, the complaint can be filed (i) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the “payee”; (ii) the Page 13 13 proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (iii) the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor.”

8. Learned counsel for the applicant further placed reliance on the judgement of Hon'ble Supreme Court **A.C. Narayanan vs. State of Maharashtra and another**² wherein the Court held as follows:-

“From the bare perusal of the said complaint, it can be seen that except mentioning in the cause title there is no mention of, or a reference to the Power of Attorney in the body of the said complaint nor was it exhibited as part of the said complaint. Further, in the list of evidence there is just a mere mention of the words at serial no.6 viz. “Power of Attorney”, however there is no date or any other particulars of the Power of Attorney mentioned in the complaint. Even in the verification statement made by the respondent no.2, there is not even a whisper that she is filing the complaint as the Power of Attorney

1 (2014) 11 SCC 790

2 (2015) 12 SCC 203

holder of the complainant. Even the order of issue of process dated 20th February, 1998 does not mention that the Magistrate had perused any Power of Attorney for issuing process.

The appellant has stated that his Advocate conducted search and inspection of the papers and proceedings of the criminal complaint and found that no Power of Attorney was found to be a part of that record. This has not been disputed by the respondents. In that view of the matter and in light of decision of the larger Bench, as referred above, we hold that the Magistrate wrongly took cognizance in the matter and the Court below erred in putting the onus on the appellant rather than the complainant. The aforesaid fact has also been overlooked by the High Court while passing the impugned judgment dated 12th August, 2005.”

9. He further submits that in the complaint it is not stated that the complaint has been filed through the power of attorney holder. He further submits that there is no averment in the complaint nor in the counter affidavit where the authorized signatory is said to have knowledge about the business transactions between the accused and company. If it is not so, it is a directors alone who should be deposed before the trial Court.

10. He further submits that it has not been averred in the complaint or in the counter affidavit that the director, Mr. Ashok Sharma was responsible for the day to day affairs of the company. He further submits that only allegation against the applicant is that he (Ashok Sharma) was the signatory and has issued the cheque.

11. He further submits that applicant, Ashok Sharma is not an active director of the company; he is a sleeping director of the company and not actively involved in the day to day affairs of the company and not authorized to conduct day to day affairs of the company, nor had the authority to sign or issue the cheque.

ARGUMENT ON BEHALF OF OPPOSITE PARTY NO.2

12. Per contra, Mr. Shwetashwa Agarwal, learned counsel for the opposite party no.2 submits that the averment made by the applicant that the applicant, Ashok Sharma was a sleeping director is just a fig of imagination. He cannot be a sleeping director when he himself is signing the cheque. As regards whether he has no authority to sign the cheque, Mr. Agarwal states, if he has no authority to sign the cheque then signing a cheque amounts to a criminal

breach of trust. It that was a situation why the other directors have not initiate any criminal proceedings against him.

13. In response to the first submission, learned counsel for opposite party no.2 submits that the law cited by counsel for the applicant has been watered down and clarified in the latest judgement of Hon'ble Supreme Court in the case of **M/s TRL Krosaki Reractories Ltd. Vs. M/s SMS Asia Private Limited and another (Criminal Appeal No.270 of 2022 arising out of SLP (Crl.) No.3113 of 2016)**³ he relies on paragraph no.25, which is quoted hereunder:-

*“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.**⁴ 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.”*

14. He further submits that **A.C. Narayanan** case was between two individuals and the Hon'ble Supreme Court was appreciating the facts of that particular case *vis a vis* the powers of a principal and an agent *inter se* and now that law has been clarified because in the cases of company, a company is a corporeal personality it is a *dejure* complainant and the person, who is representing the company is a *defacto* complainant, so those parameters of specific assertions, specific words cannot be put into a strait-

3 2022 (7) SCC 612

4 2002 (9) SCC 456

jacket formula and those specific words are not required to be mentioned. The only thing, which has to be appreciated by the Court at the time of summoning of accused is as to whether the complaint has been filed by a payee or a holder in due course, which in the case is a company so obviously the company has filed the complaint but through a *defacto* complainant, who is authorized signatory duly authorized by the resolution of the Board of Directors of the company. He further submits that it is a sufficient requirement to meet out the ingredients of Section 141 of N.I.Act. He further submits that it has also been held by the Hon'ble Supreme Court that these arguments as to whether he had the authority or not cannot be appreciated at the time of summoning and there is a full-fledged trial to follow to adjudicate these issues. The accused has the liberty to raise these questions during the course of trial but at the stage of summoning this burden cannot be put upon the magistrate to scan through the entire evidence and conduct a mini trial prior to the summoning of the accused.

15. He further submits that in the complaint if a specific word is not used that would not defeat the substantive right for prosecution. Once he has specifically alleged the specific acts and the role played to the accused persons.

16. He further submits that the complaint qualifies the threshold of the complaint as per the ingredient of Sections 138 and 142 of N.I.Act. The legally enforceable debt is there it is not disputed, the cheque has been dishonoured on the ground of insufficient funds, it cannot be disputed. The legal notice was sent in time, it is not disputed and the complaint has been filed as per the provisions of Section 138 of N.I.Act. is not disputed.

17. He further submits that the arguments advanced by the counsel for the applicant are squarely covered by the judgment of Hon'ble Supreme Court in the matter of **M/s TRL Krosaki Reractories Ltd. (supra)**.

18. He further refers on Section 168 of the Companies Act, which lays down that even upon resignation of a director he would be liable for the acts performed during the course of his directorship. For ready reference Section 168 (1) and (2) of the Companies Act are quoted hereunder:-

(1) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company:

Provided that director shall also forward director may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

(2) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:

Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

19. He further submits that scope of judicial enquiry is limited at this stage would be very limited, moreover, there are catina of judgements, which says that the inherent power of Section 482 Cr.P.C. should sparingly be used.

CASE NO.12652 OF 2016 (NARENDRA SINGH PAWAR)

20. Learned counsel for the applicant submits that the applicant, Narendra Singh Pawar is not signatory of the cheque and there was no allegation that he was looking after day to day affairs of the company.

21. Per contra Mr. Shwetashwa Agarwal, learned counsel for opposite party no.2 submits that as per provisions of Section 141 of N.I. Act the vicarious liability flows from the company to the directors, who are involved in the transaction in question. Here in the facts of the present case their involvement in the transaction has been shown in the complaint right from the very inception. The complaint and the statement on oath submitted by the complainant undisputedly discloses specific allegations of participation and the specific acts attributed to all the directors of the company, who were involved in the transaction. They placed the orders on behalf of the company, and the opposite party no.2 was pursuing the payment from the company through them. There is specific assertion against the directors of the Company. The cheque was issued on behalf of the company in which the accused/applicant herein are the directors and also responsible for the day to day affairs of the company, and the signatory was one of the director, Mr. Ashok Sharma, towards the discharge of the legally enforceable debt. Legal

notice was sent to all of them. No reply was given by them. Thereafter, a complaint was filed that is sufficient compliance of their participation.

22. Learned counsel for the opposite party no.2 submits that the this concept of vicarious liability is alien to criminal jurisprudence, however, the same was introduced in the N.I.Act for the reasons of dealing with corporeal entities because in a company the directors and its representatives and signatories are the persons who run the company. Since the company is juristic personality and cannot be prosecuted, hence, the normal criminal law will not be applicable in that case, it is for this reason the vicarious liability was first recognized and introduced by the law makers while drafting N.I.Act.

23. Learned counsel for the opposite party no.2 further submits that keeping this in mind Section 141 was enacted wherein just now the company, the key personnels, directors was to be held liable for such kind of criminal offence.

CASE NO.9430 OF 2016 (YATINDRA SINGH PAWAR)

24. Learned counsel for the applicant submits that the cheque was issued on 16.07.2015 and Mr. Yatindra Singh Pawar was appointed as director of the company on 24.11.2005 resigned from the company on 02.05.2015 and the same came in effect on 13.05.2015.

25. In reply Mr. Agarwal, submits that even assuming that he has resigned on 02.05.2015 still he cannot get out of the liabilities as the order was placed while he was a whole time director of the company. The material was supplied while he was a whole time director of the company, it seems if he has resigned only for the sake of getting away from the civil and criminal liabilities then such kind of resignation cannot absolve him of such liabilities.

CONCLUSION

26. It is undisputed that M/s. Trimurti Concast Pvt. Ltd. placed an order for supply of Sponge Iron and Silicon Manganese, which the complainant company had supplied against which a cheque was given on behalf of M/s.

Trimurti Concast Pvt. Ltd. and the signatory of the cheque was one of its directors of the company, Mr. Ashok Sharma.

27. The cheque was presented on 12.10.2015 and the same was returned back due to insufficiency of funds. A legal notice as contemplated under Negotiable Instruments Act was issued on 23.10.2015 within time. When no payment was made to the complainant, he filed a complaint under Section 138 of Negotiable Instruments Act before the Chief Judicial Magistrate, Muzaffarnagar, who being satisfied had issued summons vide order dated 05.07.2016.

28. The counsel for the applicant has argued that the proceedings under Section 138 of Negotiable Instruments is not maintainable as the complaint has been filed by a power of attorney holder and the power of attorney was not placed before the trial court neither the power of attorney holder had averred in the complaint that he had a personal knowledge about the alleged transactions.

29. To buttress his argument, the counsel for the applicant has relied on a decision passed by Hon'ble Supreme Court in the case of **A.C. Narayan vs. State of Maharashtra and another**, (2014) (supra).

30. He further placed reliance on another judgement of Hon'ble Supreme Court in the case of **A.C. Narayanan vs. State of Maharashtra and another**, (2015) (supra) wherein the Hon'ble Supreme Court had set aside the proceedings initiated under Section 138 of N.I. Act on the ground that there is no whisper in the complaint that the same was being filed through a power of attorney holder.

31. Per contra, learned counsel for the opposite party no.2 has placed reliance in one of the latest judgement of Hon'ble Supreme Court in the case of **M/s TRL Krosaki Reractories Ltd. Vs. M/s SMS Asia Private Limited and another** (supra) in which the Hon'ble Supreme Court has clearly held that the ratio laid down in the matter of **A.C. Narayanan** 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.

32. The Hon’ble Supreme Court in the matter of **Samrat Shipping Co.Pvt. Ltd. Vs. Dolly George**⁵ has held as under:-

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 it off in accordance with law. Parties are directed to appear before the trial court on 31.01.2000.

33. The Hon’ble Supreme Court in the matter of **National Small Industries Corporation Limited vs. State (NCT of Delhi)**⁶ has held as follows:-

“The term ‘complainant’ is not defined under the Code. Section 142 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

5 (2002) 9 SCC 455

6 (2009) 1 SCC

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 NI Act that 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 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 authorized and empowered to represent the company either by a resolution or by a power of attorney.

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.

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 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 proviso to section 200 of the Code will be available, even though the complaint is made in the name of a company or corporation.

34. The Hon'ble Supreme Court in the matter of Sunil Bharti Mittal Vs. Central Bureau of Investigation⁷ has held as follows:-

In the present case, however, this principle is applied in an exactly reverse scenario. Here, company is the accused person and the learned Special Magistrate has observed in the impugned order that since the appellants represent the directing mind and will of each company, their state of mind is the state of mind of the company and, therefore, on this premise, acts of the company is Criminal Appeal No. of 2015 & Ors. Page 41 of 58 (arising out of SLP (Crl.) No. 2961 of 2013 & Ors.) Page 42 attributed and imputed to the appellants. It is difficult to accept it as the correct principle of law. As demonstrated hereinafter, this proposition would run contrary to the principle of vicarious liability detailing the circumstances under which a direction of a company can be held liable.

(iii) Circumstances when Director/Person in charge of the affairs of the company can also be prosecuted, when the company is an accused person:

No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

7 (2015) 4 SCC 609

Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada (supra), the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of “alter ego”, was applied only in one direction namely where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.”

35. In view of the aforesaid facts and circumstances and the ratio laid down by the Hon’ble Supreme Court in the judgement of **A.C. Naraynan (supra)**, that the power of attorney holder, who filed the complaint clearly needs to aver that he has knowledge of the complete transaction has been watered down by Hon’ble Supreme Court in the matter of **M/s TRL Krosaki Reractories Ltd. (supra)** wherein it is held that when a complainant is a company and authorized representative can represent the company, such averment and *prima facie* material is sufficient for the Magistrate to take cognizance in such cases.

36. Undoubtedly, a company is a separate legal entity, which can only be represented through its officers, directors, managing directors, chairman etc. if such a company commits an offence, it would normally be taken as an action of that individual, who has acted on behalf of the company.

37. The argument advanced by the counsel for the applicant that the other director, Narendra Singh Pawar had nothing to do with the transaction is also not correct. All the directors are equally responsible for the act done on behalf of the company.

38. As far as, the third director, Mr. Yatindra Singh Pawar is concerned, it has been alleged that he has resigned few days before the cheque was given. It can only be seen during the trial whether he was responsible in placing the

order getting the material and, thereafter, resigning to absolve himself from any kind of liability. This issue cannot be adjudicated upon in the present proceedings.

39. 37A. It is a settled principle that if the payee is a company the complaint has to be filed in the name of the company. Section 142 of the N.I.Act does not specify as to who should represent the company, if the company is the complainant. A company can be represented by an employee or even by a known employee, who is duly authorized and empowered to represent the company either by resolution or by a power of attorney.

40. Further, where the company is a complainant, who will represent the company, and how the company will be represented in 138 proceedings is not covered by the Code. Section 200 of the Code mandatory requires an examination of the complaint, and whether the complainant is an incorporeal body, it is only one of its employee or authorized representative can be examined on behalf of the company. With the result, the company becomes a *dejure* complainant and the person, who is representing the company whether it is employee or the authorized representative becomes *de facto* complainant, thus, in every complaint lodged by a company, which is a separate juristic personality, there is a complainant *dejure* and a complainant *de facto*.

41. This application has been pending since last 8 years and the trial could not proceed, it is in the interest of justice that the trial may be concluded expeditiously in accordance with law, preferably within a period of six months from the date of receipt of certified copy of this order without granting any unnecessary adjournments to either side.

42. In view of the aforesaid facts and circumstances, the instant application filed by the directions of the company is devoid of merit, and is, accordingly, ***dismissed***.

Order Date :- 07.2.2024
S.P.