

CRL.P No. 8257 of 2019
C/W CRL.P No. 8235 of 2019
CRL.P No. 8262 of 2019
CRL.P No. 8277 of 2019
CRL.P No. 8279 of 2019



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

CRIMINAL PETITION NO. 8257 OF 2019

C/W

CRIMINAL PETITION NO. 8235 OF 2019

CRIMINAL PETITION NO. 8262 OF 2019

CRIMINAL PETITION NO. 8277 OF 2019

CRIMINAL PETITION NO. 8279 OF 2019



IN CRL.P.NO.8257/2019

BETWEEN:

SRI. H.N. NAGARAJ

...PETITIONER

(BY SRI. G S VENKAT SUBBA RAO, ADVOCATE)

AND:

SRI. SURESH LAL HIRA LAL

...RESPONDENT

(BY KUM. NEHA SHETTY, ADVOCATE)

Digitally signed by
POORNIMA
SHIVANNA
Location: HIGH
COURT OF
KARNATAKA

CRL.P No. 8257 of 2019
C/W CRL.P No. 8235 of 2019
CRL.P No. 8262 of 2019
CRL.P No. 8277 of 2019
CRL.P No. 8279 of 2019



THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO CALL FOR THE RECORDS AND QUASH THE IMPUGNED ORDER DATED 24.07.2018 PASSED BY THE XX ADDITIONAL CHIEF METROPOLITAN MAGISTRATE BENGALURU IN C.C.NO.20484/2018 BEING THE ORDER TAKING COGNIZANCE OF THE OFFENCE P/U/S.138 OF NI ACT VIDE ANNEXURE-A AND ETC.

IN CRL.P.NO.8235/2019
BETWEEN:

SRI. H.N. NAGARAJ

...PETITIONER

(BY SRI. G S VENKAT SUBBA RAO, ADVOCATE)

AND

SMT S. PRIYA SOLIWAL

... RESPONDENT

(BY SRI. K. VENKATARAMANA, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO CALL FOR THE RECORDS AND QUASH THE IMPUGNED ORDER DATED 05.12.2018 PASSED BY THE XX ADDITIONAL CHIEF METROPOLITAN MAGISTRATE BENGALURU IN C.C.NO.32057/2018 BEING THE ORDER TAKING COGNIZANCE OF THE OFFENCE P/U/S.138 OF NI ACT AND ETC.

CRL.P No. 8257 of 2019
C/W CRL.P No. 8235 of 2019
CRL.P No. 8262 of 2019
CRL.P No. 8277 of 2019
CRL.P No. 8279 of 2019



IN CRL.P.NO.8262/2019
BETWEEN:

SRI. H.N. NAGARAJ

...PETITIONER

(BY SRI. G S VENKAT SUBBA RAO, ADVOCATE)

AND:

SMT. PAYAL KISHORE KUMAR

... RESPONDENT

(BY KUM. NEHA SHETTY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO CALL FOR THE RECORDS AND TO QUASH THE IMPUGNED ORDER DATED 24.07.2018 PASSED BY THE XX ADDITIONAL CHIEF METROPOLITAN MAGISTRATE BENGALURU IN C.C.NO.20486/2018 BEING THE ORDER TAKING COGNIZANCE OF THE OFFENCE P/U/S.138 OF NI ACT VIDE ANNEXURE-A AND ETC.

IN CRL.P.NO.8277/2019
BETWEEN:

SRI. H.N. NAGARAJ

CRL.P No. 8257 of 2019
C/W CRL.P No. 8235 of 2019
CRL.P No. 8262 of 2019
CRL.P No. 8277 of 2019
CRL.P No. 8279 of 2019



...PETITIONER

(BY SRI. G S VENKAT SUBBA RAO, ADVOCATE)

AND:

SRI. KISHORE SURESHLAL

... RESPONDENT

(BY KUM. NEHA SHETTY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO CALL FOR THE RECORDS AND TO QUASH THE IMPUGNED ORDER DATED 24.07.2018 PASSED BY THE XX A.C.M.M., IN C.C.NO.20482/2018 BEING THE ORDER TAKING COGNIZANCE OF THE OFFENCE P/U/S 138 OF THE N.I ACT AND ETC.

IN CRL.P.NO.8279/2019
BETWEEN:

SRI. H.N. NAGARAJ

...PETITIONER

(BY SRI. G S VENKAT SUBBA RAO, ADVOCATE)

CRL.P No. 8257 of 2019
C/W CRL.P No. 8235 of 2019
CRL.P No. 8262 of 2019
CRL.P No. 8277 of 2019
CRL.P No. 8279 of 2019



AND:

SAW SHOBADDEVI SURESHLAL

... RESPONDENT

(BY KUM. NEHA SHETTY, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO CALL FOR THE RECORDS AND TO QUASH THE IMPUGNED ORDER DATED 24.07.2018 PASSED BY THE XX ADDL.C.M.M., BENGALURU IN C.C.NO.20479/2018 BEING THE ORDER TAKING COGNIZANCE OF THE OFFENCE P/U/S 138 OF N.I. ACT AND ETC.

THESE PETITIONS, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner in Crl.P No.8257/2019 is before this

Court seeking for the following reliefs:

- a. *Call for the records in CC No.20484/2018 from the court of XX Addl. Chief Metropolitan Magistrate, Bengaluru;*
- b. *quash the impugned order dated 24.07.2018 passed by the XX Addl. Chief Metropolitan Magistrate, Bengaluru in C.C.No.20484/2018 being the order taking cognizance of the offence p/u/s 138 of Negotiable Instruments Act vide Annexure-A;*

CRL.P No. 8257 of 2019
C/W CRL.P No. 8235 of 2019
CRL.P No. 8262 of 2019
CRL.P No. 8277 of 2019
CRL.P No. 8279 of 2019



- c. *quash the complaint in C.C.No.20484/2018 filed u/s 200 of Cr.P.C., for the offence p/u/s 138 of Negotiable Instrument Act on the file of XX Addl. Chief Metropolitan Magistrate, Bengaluru vide Annexure-B;*
- d. *issue such other order or directions as this Hon'ble Court deems fit under the circumstances of the case including costs, in the interest of justice and equity.*

2. The petitioner in Crl.P No.8235/2019 is before this Court seeking for the following reliefs:

- a. *Call for the records in CC No.32057/2018 from the court of XX Addl. Chief Metropolitan Magistrate, Bengaluru;*
- b. *quash the impugned order dated 5.12.2018 passed by the XX Addl. Chief Metropolitan Magistrate, Bengaluru in C.C.No.32057/2018 being the order taking cognizance of the offence p/u/s 138 of Negotiable Instruments Act;*
- c. *quash the complaint in C.C.No.32057/2018 filed u/s 200 of CR.P.C., for the offence p/u/s 138 of Negotiable Instrument Act on the file of XX Addl. Chief Metropolitan Magistrate, Bengaluru;*
- d. *issue such other order or directions as this Hon'ble Court deems fit under the circumstances of the case including costs, in the interest of justice and equity.*

3. The petitioner in Crl.P No.8262/2019 is before this Court seeking for the following reliefs:

CRL.P No. 8257 of 2019
C/W CRL.P No. 8235 of 2019
CRL.P No. 8262 of 2019
CRL.P No. 8277 of 2019
CRL.P No. 8279 of 2019



- a. *Call for the records in CC No.20486/2018 from the court of XX Addl. Chief Metropolitan Magistrate, Bengaluru;*
- b. *quash the impugned order dated 24.07.2018 passed by the XX Addl. Chief Metropolitan Magistrate, Bengaluru in C.C.No.20486/2018 being the order taking cognizance of the offence p/u/s 138 of Negotiable Instruments Act;*
- c. *quash the complaint in C.C.No.20486/2018 filed u/s 200 of CR.P.C., for the offence p/u/s 138 of Negotiable Instrument Act on the file of XX Addl. Chief Metropolitan Magistrate, Bengaluru;*
- d. *issue such other order or directions as this Hon'ble Court deems fit under the circumstances of the case including costs, in the interest of justice and equity.*

4. The petitioner in Cri.P No.8277/2019 is before this Court seeking for the following reliefs:

- a. *Call for the records in CC No.20482/2018 from the court of XX Addl. Chief Metropolitan Magistrate, Bengaluru;*
- b. *quash the impugned order dated 24.07.2018 passed by the XX Addl. Chief Metropolitan Magistrate, Bengaluru in C.C.No.20482/2018 being the order taking cognizance of the offence p/u/s 138 of Negotiable Instruments Act;*
- c. *quash the complaint in C.C.No.20482/2018 filed u/s 200 of CR.P.C., for the offence p/u/s 138 of Negotiable Instrument Act on the file of XX Addl. Chief Metropolitan Magistrate, Bengaluru;*

CRL.P No. 8257 of 2019
C/W CRL.P No. 8235 of 2019
CRL.P No. 8262 of 2019
CRL.P No. 8277 of 2019
CRL.P No. 8279 of 2019



d. issue such other order or directions as this Hon'ble Court deems fit under the circumstances of the case including costs, in the interest of justice and equity.

5. The petitioner in Crl.P No.8279/2019 is before this Court seeking for the following reliefs:

a. Call for the records in CC No.20479/2018 from the court of XX Addl. Chief Metropolitan Magistrate, Bengaluru;

b. quash the impugned order dated 24.07.2018 passed by the XX Addl. Chief Metropolitan Magistrate, Bengaluru in C.C.No.20479/2018 being the order taking cognizance of the offence p/u/s 138 of Negotiable Instruments Act;

c. quash the complaint in C.C.No.20479/2018 filed u/s 200 of CR.P.C., for the offence p/u/s 138 of Negotiable Instrument Act on the file of XX Addl. Chief Metropolitan Magistrate, Bengaluru;

d. issue such other order or directions as this Hon'ble Court deems fit under the circumstances of the case including costs, in the interest of justice and equity.

6. In all the above matters, a private complaint under Section 200 Cr.P.C., read with Section 138 and 141 of Negotiable Instruments Act, 1881 (for short, 'N.I.Act') came to be filed against the petitioner



herein on the allegation that the petitioner had borrowed certain money from the complainant, which was not repaid and the cheque which had been issued thereto had got dishonoured with a remark 'account blocked'. It is aggrieved by the same that the petitioner is before this Court.

7. The submission of Sri.G.S.Venkat Subba Rao, learned counsel for the petitioner is that:

7.1. The petitioner, though described as a proprietary concern, the said proprietary concern has not been specifically made a party and the petitioner has been made a party by describing him as a proprietor of Venkateshwara Stone Crushers. In essence, the submission is that both Venkateshwara Stone Crushers as a proprietary concern and the petitioner H.N.Nagaraja were required to be



arrayed as separate accused. Non-arraying of the proprietary concern separately as an accused goes to the root of the matter is contrary to Section 141 of N.I.Act and is therefore requiring the complaint which had been filed to be quashed.

7.2. In this regard, he relies upon the decision of the Panjab and Haryana High Court in the case of **SARDAR BUPENDER SINGH VS. M/S.GREEN FEEDS THROUGH ITS PARTNER VIPIN KUMAR dated 26.08.2022¹** more particularly Paras 12, 13 and 17 thereof, which are reproduced hereunder for easy reference:

12. *Clause (a) of the explanation as occurs in Section 141 of 'the Act' describes, a 'Company' to not only include any corporate body, but also makes a firm, or, other association of individuals, to become included within the realm of statutory coinage 'Company', and, besides when clause (b) thereof, when defines a 'Director', it makes the said statutory phrase,*

¹ CRM-M-541111/2021

CRL.P No. 8257 of 2019
C/W CRL.P No. 8235 of 2019
CRL.P No. 8262 of 2019
CRL.P No. 8277 of 2019
CRL.P No. 8279 of 2019



to in relation to a firm, to also include a partner in a firm.

13. *If so, when the statutory signification assigned to a 'Company', does visibly cover not only any corporate body, but also covers a firm, or other association of individuals, therefore, not only a corporate entity either private, or, public limited becomes a Company', for the purpose of application thereon of Section 141 of 'the Act', but also a firm, or, other association of individuals, do also, become covered by Section 141 of 'the Act', besides a partner in a firm when is given the colour of a Director of a firm, also does become covered for the reievant purpose.*

17. *In consequence, there is merit in the petition, and, the same is allowed, and, the complaint bearing No.467 dated 30.01.2019 under Section 138 of the Negotiable Instruments Act, titled as 'M/s Green Feeds V/s. Sardar Bhupinder Singh' (Annexure P-1), as well as, the summoning order dated 05.08.2019 (Annexure P-2), both are quashed and set aside.*

7.3. The second submission insofar as Crl.P No.8257/2019, Crl.P No.8235/2019, Crl.P No.8262/2019 and Crl.P No.8279/2019 are concerned is that the sworn statement of the Special Power Attorney holder of the complainant was recorded on which basis the



cognizance was taken and the same cannot be so done and the same is contrary to the decision of the Hon'ble Apex Court in the case of **A.C.NARAYANAN VS. STATE OF MAHARASHTRA AND ANOTHER²** more particularly Paras 31 and 33 thereof which are reproduced hereunder for easy reference:-

31. *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 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.

33. *While holding that there is no serious conflict between the decisions in MMTC (supra) and Janki*

² (2014) 11 SCC 790

CRL.P No. 8257 of 2019
C/W CRL.P No. 8235 of 2019
CRL.P No. 8262 of 2019
CRL.P No. 8277 of 2019
CRL.P No. 8279 of 2019



Vashdeo Bhojwani (supra), we clarify the position and answer the questions in the following manner:

33.1 *Filing of complaint petition under Section 138 of N.I Act through power of attorney is perfectly legal and competent.*

33.2 *The Power of Attorney holder can depose and verify on oath before the Court in order to prove the contents of the complaint. However, the power of attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions.*

33.3 *It is required by the complainant to make specific assertion as to the knowledge of the power of attorney holder in the said transaction explicitly in the complaint and the power of attorney holder who has no knowledge regarding the transactions cannot be examined as a witness in the case.*

33.4 *In the light of section 145 of N.I 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 N.I Act and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the Court, nor to examine the complainant or his witness upon oath for taking the decision whether or not to issue process on the complaint under Section 138 of the N.I. 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.

7.4. By relying upon the said decision, the submission is that a complaint under Section 138 of N.I.Act can be filed through a power of attorney holder but the name of the complaint has to be that of the complainant itself.

7.5. The power of attorney holder must have actually witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transaction. In the present case, the SPA holder not possessing such knowledge could not have been examined at the time of recording the sworn statement. The power of attorney not having complied with the requirements of the dicta laid down by the Apex Court in



A.C.Narayanan's case², the sworn statement recorded cannot be considered and cognizance could not have been taken. On both the above grounds, he submits that the above petitions are required to be allowed and proceedings required to be quashed.

8. Per contra, Ms.Neha Shetty, learned counsel for the respondent would submit that:

8.1. Section 141 of N.I.Act would apply insofar as a company is concerned. The same has no applicability to a proprietary concern. A proprietor and a proprietary concern are one and the same. There being no registration or perpetual seal of succession insofar as the proprietary concern is concerned, they have no separate existence and there could not be arrayed as two different parties.



8.2. As regards the power of attorney, she submits that he has categorically averred in the complaint when filed that he is the son and special power of attorney holder of the Proprietor and is aware of the facts of the matter and he would be deposing to the matter. The necessary averments having been made it is in compliance with the decision of **A.C.Narayanan's case²**. On this basis, she submits that the petition is required to be dismissed.

9. Heard Sri.G.S.Venkat Subbarao, learned counsel for the petitioner and Ms.Neha Shetty, learned counsel for respondent and perused papers.

10. The points that would arise for determination by this Court are:



- 1) Whether a proprietary concern is required to be arrayed as a separate party in a proceeding under Section 138 of N.I.Act?
- 2) Whether the sworn statement of the Special Power of Attorney holder could be recorded in a proceeding under Section 138 of N.I.Act?
- 3) What order?

11. **Answer to Point No.1:** Whether a proprietary concern is required to be arrayed as a separate party in a proceeding under Section 138 of N.I.Act?

11.1. The facts relating to each of the complaint, cheque numbers, date of dishonour etc., are not relevant for the purpose of these matters.

11.2. The submission of Sri.Venkat Subba Rao by relying upon the decision in ***Sardar Bhupinder Singh¹*** is that the proprietary concern is a separate entity and as such, ought to have been arrayed as a separate accused.

11.3. Section 141 of Negotiable Instruments Act, 1881 reads as under:



141. Offences by companies. --

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

PROVIDED that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

¹[PROVIDED FURTHER that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.



Explanation.— For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.]

11.4. The said provision relates to offences by Companies. A reading of the entire provision does not indicate the applicability of the same to a proprietary concern though it indicates that it would apply to a company, firm or association of individuals. The requirement of Section 141 of N.I. Act has arisen on account of a company being a corporal entity, a firm being either registered or unregistered comprising of two or more partners and an association of individuals also comprising of two or more individuals. Thus, in all the three situations, there would be more than two or more people who could be



incharge of the affairs of the business of the company, firm or association of individuals and it is therefore required for the complainant to make specific allegations as regards each such person so as to invoke the criminal process.

11.5. Insofar as a proprietary concern is concerned, as the name indicates there can only be one proprietor and it is the said proprietor who would be incharge of the affairs of the proprietary concern. Thus, it is not required for any pleading to be made as regards who is the person in charge of a proprietary concern when there is only one proprietor. I am unable to agree with the decision of the Hon'ble Panjab and Haryana High Court in the case of **SARDAR BUPENDER SINGH¹** where the definition of a company has been extended to a proprietary



concern to contend that the proprietary concern has a separate and independent existence. In my considered opinion a proprietary concern cannot have any independent or separate existence dehors the proprietor thereof.

11.6. In view thereof, I answer point no.1 by holding that in a proceeding under Section 138 of N.I.Act, the arraying of a proprietor as an accused or a proprietary concern represented by the proprietor would be sufficient compliance with the requirements under Section 138 of N.I.Act, the proprietor and the proprietary concern are not required to be separately arrayed as a party accused.

12. **Answer to Point No.2: Whether the sworn statement of the Special Power of Attorney holder could be recorded in a proceeding under Section 138 of N.I.Act?**



12.1. Para 33 of the decision of the Hon'ble Apex Court in **A.C.Narayanan's²** case has been reproduced hereinabove.

12.2. In terms of Para 33.1 of **A.C.Narayanan's²** case, it is clear that a complaint under Section 138 of N.I.Act can be filed through a power of attorney. In the present case, the complaint has been filed by a Special Power of Attorney, which is sufficient compliance.

12.3. In terms of para 33.2 of **A.C.Narayanan's²** case, a power of attorney could depose and verify on oath and prove the contents of the complaint which has been done.

12.4. The power of attorney holder being a witness to the transaction as an agent is a matter which has been averred in the complaint but the



veracity of the same would always be subject to cross-examination in the proceedings. In the event of the accused being able to establish that the power of attorney does not know the transactions and/or that the deposition given is not correct or false, the accused could always succeed in the said mater. At the stage of filing of an affidavit or recordal of sworn statement it cannot be said or decided as to whether the power of attorney is aware of or not of the transactions.

12.5. In terms of para 33.3 of **A.C.Narayanan's**² case, what is required is for a specific assertion to be made that the power of attorney is aware of the transactions. In the present case, such an assertion has been made. Be that as it may, during the course of cross-examination if it is



established that the power of attorney holder has no knowledge regarding the transaction, then the complaint itself would fail and it is the risk which has been taken by the complainant by appointing power of attorney holder.

12.6. In view of the above, I answer Point No.2 by holding that a power of attorney could file a complaint, could depose to an affidavit as also record his sworn statement in a proceedings under Section 138 of N.I.Act.

13. **Answer to Point No.3:** What order?

13.1. The two contentions which have been addressed by Sri.Venkat Subbarao, learned counsel for the petitioner being dealt with hereinabove, those two grounds not being sufficient for exercise of powers under Section 482 Cr.P.C. I am of the considered opinion that the petitions not making any grounds

CRL.P No. 8257 of 2019
C/W CRL.P No. 8235 of 2019
CRL.P No. 8262 of 2019
CRL.P No. 8277 of 2019
CRL.P No. 8279 of 2019



are required to be dismissed and as such Criminal
Petitions are dismissed.

Sd/-
JUDGE

PRS
List No.: 1 Sl No.: 53

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