



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED
BY SUBORDINATE COURT) NO. 1229 of 2018**

**FOR APPROVAL AND SIGNATURE:
HONOURABLE MS. JUSTICE NISHA M. THAKORE**

Approved for Reporting	Yes	No
		NO

ALPESHBHAI HARSHADBHAI PATEL
Versus
STATE OF GUJARAT & ANR.

Appearance:

LUV S SHAH(9365) for the Applicant(s) No. 1

MS. KRINA CALLA ADDL. PUBLIC PROSECUTOR for the
Respondent(s) No. 1

RC JANI & ASSOCIATE(6436) for the Respondent(s) No. 2

CORAM:HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 19/06/2026

ORAL JUDGMENT

1. The present application is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 at the instance of the original accused, challenging the judgment and order dated 31.08.2018, passed by the learned Addl. District Judge, Narmada at Rajpipla in Criminal Appeal No. 26 of 2018 as well as the judgment and order dated 05.05.2018, passed by the learned Judicial Magistrate, First Class, District Narmada, at Rajpipla in Criminal Case No. 2607 of 2015. By the said impugned judgment and order passed by the Courts below, the present applicant has been convicted for the offence



punishable under Section 138 of the Negotiable Instruments Act, 1881(for short the “the Act”). The learned Magistrate has also ordered the accused to undergo simple imprisonment for a period of one year and a fine of Rs. 10,000/-. In case of default of fine, the accused is also directed to undergo simple imprisonment for a further period of 3 months. Hence, the present application.

2. Considering the grounds raised in the Revision Petition, the learned Single Judge of this Court vide order dated 25.10.2018 had admitted the petition and pending the final adjudication of the Revision Application, had suspended the sentence and had enlarged the applicant on bail subject to deposit of 30% of the amount of cheque within a period of one month thereafter.

3. The matter was taken up for hearing with the able assistance of learned Advocates on record. Learned advocate Ms. Tejal Vashi has appeared with Mr. Luv S. Shah learned advocate on record for the applicant-original accused. She has vehemently assailed the impugned judgment and orders of conviction passed by the learned Magistrate and by the learned Session Judge.

**Submission on behalf of Applicant-original accused:**

4. At the outset, she has summarised the defence raised by the accused, disputing his liability to pay any amount of cheque. It was submitted that the complainant has failed to establish that the cheque was issued towards “legally enforceable debt”. It was submitted that no legal notice was served upon the accused before lodging of the criminal complaint. It was further submitted that in absence of any documents that is partnership deed, authorisation letter, any averments expressly stated neither in the legal notice, original complaint or even in the deposition verifying about the applicant being the partner of the firm; the complaint signed in the individual capacity of a person, was not maintainable. She has also pointed out that no documentary worth in the nature of statement of accounts has been brought on record to suggest that the disputed cheque amount was borrowed by the accused. A categorical defence was raised by the accused that the cheque was issued as a security/surety and therefore, in absence of any intimation about deposit of cheque given by the complainant, the accused cannot be convicted for the offence under Section 138 of the N.I Act as the cheque was misused.

5. To substantiate her defence, learned advocate at the outset invited my attention to the legal notice, produced on



record at Exh. 11. It was submitted that on close reading of the contents of the said legal notice, nowhere it transpires that the complainant, namely Rameshbhai Dahyabhai Patel was authorised and instructed by the payee i.e. Shri Laxmi Finance firm to pursue the remedy under the provisions of the Act, 1881. It is averred in the legal notice that amount of Rs. 1 lakh was borrowed by the accused on 23.09.2014 which was paid by account payee cheque. Thereafter, on 31.12.2014, the accused had approached the firm and had handed over sum of Rs. 3 lakhs as borrowed earlier on 06.05.2014. It is further averred that the accused had stated to adjust the aforesaid amount and had prayed for further amount of Rs. 3 lakhs. At that stage, the firm had issued cheque of Rs. 3 lakhs drawn in favour of the accused as handed over on 31.12.2014. While borrowing the aforesaid amount of Rs. 3 lakhs, the accused had assured to repay the total amount of Rs. 4 lakhs, including the earlier borrowed amount of Rs.1 lakh dated 23.09.2014, by handing over cheque bearing No. 001470 dated 09.07.2015 (“the disputed cheque”). It was pointed out that in para 2 of the aforesaid legal notice as averred that on 05.07.2015, the repayment of the amount of Rs. 4 lakhs could not be done, the accused had assured to realise the amount by cheque by depositing the same after a period of two months. Accordingly, the cheque bearing No. 001470 of Bank of Maharashtra issued by the accused was deposited by the complainant on 11.09.2015 which was dishonored on the



ground of “funds insufficient”.

6. Considering the aforesaid averments made in the legal notice, she has submitted that it is apparent that no prior intimation was given to the accused about the deposit of the cheque on 11.09.2015. She has further submitted that even appreciating the aforesaid elements in the legal notice, the nature of transaction as can be discerned is of security cheque being handed over against the borrowed amount of Rs. 4 lakhs. In such circumstances, there was no willful default on the part of the accused and therefore, the proceedings under Section 138 of the Act could not have been entertained by the learned Magistrate by issuing summons.

7. She has further invited my attention to the findings and reasons recorded by the learned Magistrate on the aforesaid aspect. Referring to the relevant observations recorded in para 11 under the head of defence of the accused, despite specific defence being raised by the accused while appreciating the evidence on record, the learned Magistrate has failed to assign any reasons in this regard. It was further submitted that no document worth has been produced on record to suggest that the cheque was issued towards legally enforceable debt. The learned Magistrate was duty bound to look into the statement of accounts so as to verify as to the cheque relates to any



outstanding dues as averred by the complainant. At this stage, learned advocate had referred to the statement of the accused, recorded under Section 313 of the Criminal Procedure Code and had pointed out that against specific question was put with regard to the disputed cheque, the accused had categorically stated that no demand of any amount was made by the complainants neither any such amount has been paid to the complainant. She has further invited my attention to the fact that even service of legal notice has also been disputed by the accused as evident from Section 313 statement. The specific defence was raised by the accused denying his signature on the Registered Post A.D.

8. She has further raised objection with regard to the maintainability of the complaint itself at the instance of the original complainant on the ground that no authorisation letter issued by the payee-partnership firm has been produced on record. Neither any documents worth i.e. partnership deed, any resolution passed by the partners of the partnership firm authorising the original complainant to pursue the proceedings, has been brought on record. In this regard, she has invited my attention to the deposition of the complainant Rameshbhai Dahyabhai Patel recorded at Exh. 16, before the Trial Court. It was submitted that nowhere in the examination-in-chief, the said witness has deposed



about the fact that he is the partner of the firm and he has been authorised by the payee partnership firm to pursue the proceedings. On the contrary, in the cross-examination, the said witness has admitted that license has not been issued in the name of partnership firm as regards Exh. 7 produced on record though he has mentioned that his name appears as one of the partners. There appears to be other persons on record. He has admitted the fact that the business is running in the name of Sri Laxmi Finance firm. He has further admitted the fact that there is no document being produced on record to suggest that the amount indicated in the cheque is towards the outstanding legal dues of the accused. He has also admitted the fact that the partnership deed has not been produced on record. He has also admitted the fact that in the original complaint at Exh. 1, he has signed in his individual capacity and there is no endorsement of stamp of Sri Laxmi Finance firm. The disputed cheque is produced on record at Exh. 8 wherein also his name does not appear as payee, however, it is issued in the name of Sri Laxmi Finance. He has also admitted the fact that no document has been produced in the nature of authorisation letter to suggest that he has been authorised to pursue the proceedings.

9. Learned advocate for the accused had, therefore, submitted that with such evidence on record, the learned



Magistrate has committed grave error in arriving at a conclusion that in absence of the issuance of cheque, signature of the drawer being not disputed, the cheque was given towards legal debt. It was submitted that it is not the evidence which the accused may have brought on record to be considered for the purpose of ascertaining the defence raised by the accused. The Courts can always appreciate the defence of the accused from the entire evidence produced on record including the cross-examination of the complainant.

10. In order to substantiate her aforesaid arguments, learned advocate had placed reliance upon the decision of the **Madras High Court in the case of M.C Baby Vs. M/s. Sastha Home Tech., Crl. R.C No. 297 and 305 of 2020 and Crl. M.P No.s 3854 and 3855 of 2020, order dated 15.05.2023.** Referring to the aforesaid judgment, it was submitted that the points for consideration arose before the learned Judge was as to whether a complaint under Section 138 of the Act, 1881, by a partner of a firm without authorisation, is maintainable? The learned judge was of the view that despite issue of maintainability being specifically raised by the accused, the lower Appellate Court failed to apply the correct legal position as well as erred in miss-quoting the facts. On scrutiny of the complaint, the Court noted that the complaint was signed not on behalf of



the firm, but as an individual and, therefore, has arrived at a conclusion that the findings and reasons assigned by the Lower Appellate Court was contrary to the record and hence, perverse. On the legal position, the learned judge took into consideration the earlier pronouncement of the Kerala High Court in the case of **Abdul Gafoor Vs. Abdul Rahman 1999(4) Crimes 1998** as well as Hon'ble Supreme Court in the case of **BSI Ltd. And Anr. Vs. Gift Holdings Pvt. Ltd. And Anr. 2000 SCC (Cri) 538**, taking a view that Section 69 (2) of the Partnership Act is no bar to initiate a criminal complaint. The learned judge further referred to the pronouncement of Madras High Court in the case of **New Kruba Jeweller Vs. V. Kanchana reported in 2017, (1395) SCL 264 (Mds)** and of the Hon'ble Supreme Court in the case of **Bhupesh Rathod Vs. Dayashankar Prasad Chaurasia reported in 2022 (2) SCC 355**.

11. In the aforesaid decisions of the Hon'ble Supreme Court, the resolution of the Board signed by all members was not produced along with the authorisation letter. The Trial Court had recorded acquittal. The Hon'ble Supreme Court noted that the artificial person being the company had to act through a person/official which would include the Chairman or Managing Director. At the same time the Hon'ble Supreme Court took note of the fact that what was produced on record was a simple copy of authorisation and,



therefore, naturally it would not include the signature of all Board members as it would be reflected in the minutes of the meeting of the Board. Bearing in mind the aforesaid legal position, the Court had noted that had the partnership deed produced on record, the Court could have remanded the matter back to the Trial Court to receive the additional documents and to decide afresh as done in **New Kruba Jewellers (supra)**. Following the judgment of Hon'ble Supreme Court in the case of **Bhupesh Rathod (supra)**, the Revision petition could have been decided on merits. However, considering the fact that no authorisation letter has been produced on record had opined that the complaint is to be dismissed.

12. Learned advocate has also placed reliance upon the recent pronouncement of Hon'ble Supreme Court in the case of **M/s. Naresh Potteries Vs. M/s. Aarti Industries Neutral Citation 2025 INSC 1**. Learned advocate has emphasised upon the observations made by the Hon'ble Supreme Court in para 21 and para 30 onwards to contend that there has to be explicitly stated in the complaint that the complainant is the partner of the partnership firm and is authorised by the partnership firm. It was also emphasised that verifying affidavit has to be in a particular format as considered by the Hon'ble Supreme Court in the facts of the said case. Applying the aforesaid principles, the



present complaint is not instituted by the competent person when admittedly no document worth authorisation letter resolution passed by the firm has been produced on record. In view thereof, the mandatory requirement of Section 142(A) of the N.I Act, 1881 has not been complied as the complainant cannot be treated as payee or even a holder in due course to pursue the remedy of complaint under the Section 138 of the Act, 1881. In such circumstances, the Magistrate could not have assumed the jurisdiction under the provisions of N.I Act, 1881. The reliance was also placed on the decision of the learned Single Judge of this Court in the case of **J. Chitranjan and Company Vs. State of Gujarat and Ors. reported in 2016 :GUJHC:35817 equivalent MANU/GJ/2338/2016**, on the issue of presumption as to existence of legally enforceable debt or liability would not arise in terms of Section 139 of the Act of 1881.

13. Learned advocate has, therefore, urged this Court to allow the present Revision Application and to quash and set aside the impugned judgment and order of conviction.

Submission on behalf of Respondent no.2- Original Complainant:

14. Learned advocate Mr. Vishrut Jani appearing on behalf of R. C Jani and Associates, learned Advocate on record for respondent No. 2-original complainant had forcefully



objected to the aforesaid submissions made by learned advocate for the applicant. At the outset, learned advocate has submitted that in view of concurrent findings and reasons recorded by learned magistrate and the Appellate Court, the scope of revision Petition is limited and is confined to ascertain as to whether any palpable error, perversity or any jurisdictional error has been committed by the Courts below. In order to substantiate his argument, he has taken me through the findings and reasons recorded by the Magistrate as well as First Appellate Court.

15. As regards submissions made by learned advocate disputing the service of legal notice is concerned, he had referred to the findings and reasons assigned by the learned Magistrate as recorded in para 14 of the impugned judgment. It was pointed out that cogent material in the nature of legal notice (Exh. 11) of postal receipt (Exh. 12) and registered post (Exh. 13) has been produced on record and has been looked into by the Courts below. The learned Magistrate has therefore, having verified fact about similarity in the address of the accused as reflected in the legal notice as against in the cause title of the complaint where the summons has been effected, has followed the principles laid down by the Hon'ble Supreme Court in the case of **C.C. Alavi Haji Vs. Palapetty Muhammed** reported in **2007 Vol 6 SCC 555**. He has therefore, submitted that



in absence of any error or perversity being pointed by learned advocate on the aforesaid issue the same is not required to be entertained.

16. As regards the submissions made by learned advocate on the aspect of legally enforceable debt is concerned he has pointed out the relevant provisions of the Act, 1881 as well as the legal position with regard to the scheme of the Act, as considered by the Hon'ble Supreme Court as well as by this Court on number of occasions. It was pointed out that admittedly no reply was given to the legal notice issued by the complainant firm. In such circumstances, the Courts below has rightly appreciated the defence raised by the accused. As regards defence raised by learned advocate about the cheque being misused is concerned, in absence of any response being given to the legal notice and in view of the settled legal position as laid down by the Hon'ble Supreme Court in the case of **Rangappa Vs. Sri Mohan** reported in **AIR 2010 SC 1898**, no error can be found in the approach of the learned Magistrate in the facts of the case. He has therefore, urged this Court to not to entertain the revision on the ground of the absence of vital ingredient of legally enforceable debt for the cheque being misused. In absence of any response given to the legal notice and in absence of any challenge to the signature of the drawer in the cheque, it has clearly been established on record that the cheque was issued towards legally enforceable debt. The



learned judge has rightly raised the presumption in view of the statutory provisions of Section 118 read with Section 139 of the Act, 1881. On the aspect of the absence of the statement of account and other related documents being raised, it was submitted that appreciating the cross-examination of the complainant and the legal position laid down, the burden was upon the accused to rebut such presumption. In absence of any document worth produced on record to suggest about any payment being made towards past transaction, no iota of doubt was left to examine the issue of legally enforceable debt. (In order to substantiate his argument learned advocate has referred to and relied upon the judgment of Hon'ble Supreme Court in the case of **Renuka Vs. The State of Maharashtra and another** reported in **2026 Live Law (SC) 338**).

17. Learned advocate has thereafter argued on the core contention raised by learned advocate for the applicant with regard to maintainability of the complaint. Learned advocate at the outset has invited my attention to the contents of the legal notice as well as of the original complaint and the deposition of the complainant recorded at Exh. 16. It was submitted that admittedly, the complaint is signed in the name of Dahyabhai Rameshbhai Patel who is the partner of the partnership firm namely Sri Laxmi Finance. It was pointed out that the disputed cheque was issued in the



name of “Sri Laxmi Finance” by the accused.

18. It was further submitted that the issue of absence of authorisation letter was raised for the first time at the appeal stage. However, according to learned advocate there is sufficient material on record to satisfy the Court that the complainant had acted under the authorisation of the partnership firm. Inviting my attention to the relevant findings and reasons assigned by the learned Magistrate, it was pointed out from the record that the license issued by the competent authority to run the business of finance has been produced on record at Exh. 7. On bare appreciation of the aforesaid document, it is evident that the business was run in the name of “Sri Laxmi Finance” in which, the present complainant, under whose signature complaint was submitted was an active partner. He has further referred to relied to and relied upon various judgments to substantiate his argument that the partners in a partnership firm have the implied authority to pursue the proceedings.

19. The learned advocate has placed reliance upon the judgment of Hon’ble Supreme Court in the case of **M/s. Naresh Potteries (supra)** as relied upon by learned advocate for the applicant. Learned advocate had referred to and relied upon the facts of the case to point out that in case of sole proprietor, the letter of authority authorising the complainant, who was the manager and caretaker of the



firm was produced on record, subsequently. The attention of this Court was invited to the solitary question which was raised for consideration as to whether complaint filed by the appellant under Section 138 of the Act of 1881, was in accordance with the requirement of Section 142 of the Act. Learned advocate has laid much emphasis on the observations made in paras 15, 16, 20, 21, 25, 26 and 33.

20. Referring to the relevant observations, learned advocate has submitted that the requirement of Section 142 of the Act, 1881 stands complied once it is established on record that the signatory of the complaint is a partner of the partnership firm. He has further relied upon the provisions of Section 2 of the Act of 1881 which explains the terms 'act of a firm'. The reference was made of definition of term 'partnership', 'partner', 'firm' and 'firm name'. The reliance was also placed on Section 18, 19 and 22 of the Partnership Act, 1932. He has also referred to Sections 7, 8, 9 Section 138 and Section 142 of the N.I Act, 1881. Referring to the aforesaid provisions, learned advocate has referred to and relied upon the judgment of Allahabad High Court in the case of **Mohnish Jain and Anr. Vs. State of U.P and Anr. 2025 (Law Suit ALL) 486**. Referring to the aforesaid judgment, he had submitted that similar contentions were raised before the learned Judge. The learned Judge upon appreciating the judgment of the Coordinate Bench of



Allahabad High Court in the case of **Abishek Jain Vs. State of U.P reported in 2023, Supreme (ALL) 1581** as well as of Hon'ble Supreme Court in the case of **Sanganer Dal and Flour Mill Vs. F.C.I and Ors, 1992 1 SCC 145**, had laid down that a partner of the firm also becomes the holder in due course of the cheque within the meaning of Section 142 (1) of the N.I Act and therefore, the complaint at the instance of the partner of a firm in his own name is also maintainable. Apart from the aforesaid decision, the learned advocate has also placed reliance upon the judgment of Bombay High Court in the case of **Reshmi Constructions Vs. Laxman Vithal Chunekar 2014 Law Suit (BOM) 578** and decision of this Court in the case of **Geekay Exim (India) Ltd. Vs. State of Gujarat reported in 1997 Law Suit (GUJ) 290** as well as judgment of Punjab and Haryana High Court, in the case of **State Bank of India Vs. SIMCO ENGG Works** reported in **2005 AIR (P & H) 63** (paras 17, 18, 19, 21). Learned advocate has also referred to and relied upon the recent decision of Hon'ble Supreme Court in the case of **Dhanasingh Prabhu Vs. Chandrasekar and another** reported in **2025 Law Suit (SC) 928 Equivalent citation 2025 INSC 831**.

21. Learned advocate has therefore, submitted that in view of the aforesaid legal position laid down by Hon'ble Supreme Court, this Court can always look into the findings and



reasons assigned by the Courts below in light of the evidence produced on record to examine as to whether there is any illegality, perversity or jurisdictional error being committed by the Courts below. He has therefore, submitted that even on appreciation of the overall evidence on record, it can be ascertained from the material to draw a conclusion that the signatory to the complaint was a partner of the firm and had therefore, an inherent implied authority vested in him to pursue the proceedings on behalf of the partnership firm.

22. Concluding the arguments, learned advocate for the complainant had submitted that considering the nature of the business of partnership firm of being a financial institution, it was engaged in lending and recovering of money and the signatory to the complaint being active partner of the partnership firm had acted for the realization of the money in the name of the partnership firm and not in his individual. He has therefore, submitted that in absence of any perversity, palpable error or jurisdictional error being committed by the courts below, this Court may not interfere with the impugned judgment and order of conviction recorded by the Courts below and may dismiss this petition.

Analysis:

23. I have heard learned advocates appearing for the respective parties at length. I have also considered their



submissions in light of the various judgments relied upon by them during the course of hearing. I have also closely scrutinised the findings and reasons assigned by the Courts below in light of the record and proceedings, placed for consideration along with the present petition.

24. The short question which arises for the consideration of this Court in the present petition is as to whether the petitioner has been able to point out any perversity, palpable error or jurisdictional error being committed by the learned Magistrate and/or by the learned Sessions Judge, while passing impugned judgment an order of conviction in the proceeding arising under Section 138 of the N.I Act, 1881?

25. At the outset, it would be appropriate to examine the issue of maintainability of complaint on the ground of absence of authorization letter as raised by the petitioner. In order to appreciate the aforesaid contention raised by learned advocate for the petitioner it would be appropriate to take into consideration the law laid down by the Hon'ble Supreme Court in this regard. In my view, the issue of absence of authorization letter *vis a vis* maintainability of complaint at the instance of one of the partner, in the case of complaint made on behalf of partnership firm is no more res integra in view of decision of Hon'ble Supreme Court in the case of **M/s Naresh Potteries (supra)**.



26. In order to understand the settled legal position, it would be appropriate to revisit the relevant observations made by the Hon'ble Supreme Court in the case of **M/s Naresh Potteries (supra)**. The solitary question which had arose for consideration before the Hon'ble Supreme Court was:

“The solitary question that we are called upon to answer is as to whether the complaint filed by the appellant herein under Section 138 of the NI Act is in accordance with the requirement under Section 142 of the N.I Act”.

27. The Hon'ble Supreme Court had thereafter considered the relevant provisions of the N.I Act, more particularly Section 142 of the N.I Act, which reads as under:

“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;”

28. The Hon'ble Supreme Court has further considered Section 190 of Code of Criminal Procedure which empowers the learned Magistrate to take cognizance of offence upon receiving a complaint of facts which constitute an offence and has thereafter considered section 200 of the Code, which requires the Magistrate to examine the complainant



on oath and any witness, if present. Having noted the aforesaid provisions, the Hon'ble Supreme Court has also considered the legal bar envisaged in Section 142 of the N.I Act before taking cognizance of offence punishable under Section 138 of the Act, 1881. Thus, the Court has noted that for taking cognizance of the complaint under Section 138 of the Act there has to be a complaint *in writing and made by the payee, or as the case may be, by the holder in due course of the cheque*. Thereafter, the Court has considered the well settled principles laid down in the series of judgments by observing as under:

"15. This Court in the case of National Small Industries Corporation Limited v. State (NCT of Delhi) and Others had an occasion to consider the validity of a complaint under Section 138 of the NI Act and the satisfaction of the requirement under Section 142 thereof, as well as to determine as to who could be considered to be the complainant/representative in a case where the complaint is to be filed by an incorporated body. This Court held as follows:

"14. The term "complainant" is not defined under the Code. Section 142 of the NI Act requires a complaint under Section 138 of that Act to be made by the payee (or by the holder in due course). It is thus evident that in a complaint relating to dishonour of a cheque (which has not been endorsed by the payee in favour of anyone), it is the payee alone who can be the complainant. The NI Act only provides that dishonour of a cheque would be an offence and the manner of taking cognizance of offences punishable under Section 138 of that Act. However, the procedure relating to initiation of proceedings, trial and disposal of such complaints, is governed by the Code. Section 200 of the Code requires that the Magistrate, on taking cognizance of an offence on complaint, shall examine upon oath the complainant and the witnesses present and the



substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses. The requirement of Section 142 of the NI Act that the payee should be the complainant, is met if the complaint is in the name of the payee. If the payee is a company, necessarily the complaint should be filed in the name of the company. Section 142 of the NI Act does not specify who should represent the company, if a company is the complainant. A company can be represented by an employee or even by non-employee authorised and empowered to represent the company either by a resolution or by a power of attorney. a

19. Resultantly, when in a complaint in regard to dishonour of a cheque issued in favour of a company or corporation, for the purpose of Section 142 of the NI Act, the company will be the complainant, and for purposes of Section 200 of the Code, its employee who represents the company or corporation, will be the de facto complainant. In such a complaint, the de jure complainant, namely, the company or corporation will remain the same but the de facto complainant (employee) representing such de jure complainant can change, from time to time. And if the de facto complainant is a public servant, the benefit of exemption under clause (a) of the proviso to Section 200 of the Code will be available, even though the complaint is made in the name of a company or corporation."

"16. While this Court was primarily concerned with the issue relating to the exemption available against examining a public servant in view of [Section 200\(a\)](#) of the Cr.P.C., this Court nevertheless clarified that the requirement of [Section 142](#) of the NI Act that the payee should be the complainant would be met if the complaint is in the name of the payee. Where the payee is a company, this Court observed that the complaint should necessarily be filed in the name of the company, if the company is the complainant. In such cases, this Court held that a company can be represented by an employee or even a non-employee authorised and empowered to



represent the company either by a resolution or by a power of attorney. As a consequence of the aforesaid discussion, this Court concluded that for the purposes of [Section 142](#) of the NI Act, the company will be the complainant and for the purposes of [Section 200](#) of the Cr.P.C., its employee who represents the company, will be the de facto complainant while the company will remain the de jure complainant, regardless of any change in the de facto complainant.

17. Having discussed as to who could file a complaint on behalf of an incorporated body, it would be apposite to consider the legal validity of a complaint by the power of attorney holder of such an incorporated body. A three-Judge Bench of this Court in the case of [A.C. Narayanan](#) (supra) was called upon to answer a reference with regard to the conflicting decisions delivered by two Division Benches of this Court in [M.M.T.C. Ltd. and Another v. Medchl Chemicals & Pharma P. Limited and Another](#)¹⁰ and [Janki Vashdeo Bhojwani and Another v. IndusInd Bank Limited and Others](#)¹¹. While answering the reference, what fell for consideration before this Court was the maintainability of a complaint under [Section 138](#) of the NI Act filed by the power of attorney holder on behalf of the original complainant and the necessity of specific averments as to the knowledge of the power of attorney holder with respect to the facts and circumstances leading to the dishonour of the cheque(s) and the preference of the criminal proceedings. This Court held as follows:

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

21.1. Whether a power-of-attorney 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 power-of-attorney holder can be verified on oath under Section 200 of the Code?

21.3. Whether specific averments as to the knowledge of the power-of-attorney holder in the 10 (2002) 1 SCC 234 : 2001 INSC 572 11 (2005) 2 SCC 217 : 2004 INSC 695 impugned transaction must be



explicitly asserted in the complaint?

21.4. If the power-of-attorney holder fails to assert explicitly his knowledge in the complaint then can the power-of-attorney 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?

28. The power-of-attorney holder is the agent of the grantor. When the grantor authorises the attorney holder to initiate legal proceedings and the attorney holder accordingly initiates such legal proceedings, he does so as the agent of the grantor and the initiation is by the grantor represented by his attorney holder and not by the attorney holder in his personal capacity. Therefore, where the payee is a proprietary concern, the complaint can be filed by the proprietor of the proprietary concern, describing himself as the sole proprietor of the payee, the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor, and the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor. However, we make it clear that the power-of-attorney holder cannot file a complaint in his own name as if he was the complainant. In other words, he can initiate criminal proceedings on behalf of the principal.

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.

....

33. While holding that there is no serious conflict between the decisions in [M.M.T.C. \[M.M.T.C. Ltd. v. Medchl Chemicals and Pharma \(P\) Ltd., \(2002\) 1 SCC 234 : 2002 SCC \(Cri\) 121\]](#) and [Janki Vashdeo Bhojwani \[Janki Vashdeo Bhojwani v. IndusInd Bank Ltd., \(2005\) 2 SCC 217\]](#), 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 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 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 or 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.

34. We answer the reference on the above terms and remit the matter to the appropriate Bench for deciding the case on merits.” (emphasis supplied).”

29. Considering the aforesaid legal position, the Hon’ble Supreme Court has held that in view of Sections 138, 142, 145 of the N.I Act as well as Section 200 of the Code of Criminal Procedure, it is incumbent upon the Magistrate, to verify the complaint by examining the complainant. It is only when the learned Magistrate after considering relevant documents and having examined the complainant or his witnesses, may call upon the complainant to remain present before the Court and examine the complainant and or/ his witness upon oath for taking decision as to whether or not to issue process on the complaint under Section 138 of the N.I Act. Having noted the aforesaid scheme of the Act, the Hon’ble Court has further taken into consideration the



earlier judgment in the case of **TRL Krosaki Refractories Limited Vs. M/s SMS Asia Private Ltd. and another** reported in **2022 7 SCC 612** by observing as under :-

20. More recently, in the case of [TRL Krosaki Refractories Limited](#) (supra) similar facts as the present matter arose for consideration by this Court. In the said case, a complaint came to be filed by the payee company through its General Manager (Accounting) under [Sections 138 and 142](#) of the NI Act. The complaint was registered based on the affidavit filed on behalf of the complainant, in lieu of an oral sworn statement. Upon being satisfied that there was sufficient material and the complaint under [Section 138](#) of the NI Act against the accused was in accordance with law, the SDJM took cognizance of the complaint and issued summons to the accused-firm therein. Assailing the summoning order, the accused-firm filed a petition before the High Court under [Section 482](#) of the Cr.P.C. for quashing of the summoning order, being aggrieved by the fact that the complaint had been filed by an incompetent person inasmuch as the complainant neither had knowledge about the alleged transaction, nor had he witnessed the same, nor was there any averment in the complaint that the complainant had been duly authorized by the payee-firm to initiate criminal proceedings on its behalf. The High Court had allowed the petition under [Section 482](#) of the Cr.P.C. and set aside the summoning order, which led to an appeal being filed before this Court. A three-Judge Bench of this Court upon a thorough consideration of the judgments of this Court by which the law on the subject-matter at hand has been crystallised, allowed the appeal and set aside the judgment of the High Court. This Court held as follows:

“21. A meaningful reading of the above would indicate that the company having authorised the General Manager (Accounting) and the General Manager (Accounting) having personal knowledge had in fact been clearly averred. What can be treated as an explicit averment, cannot be put in a straitjacket but will have to be gathered from the circumstance and the manner in which it has been averred and conveyed, based on the facts of



each case. The manner in which a complaint is drafted may vary from case to case and would also depend on the skills of the person drafting the same which by itself, cannot defeat a substantive right. However, what is necessary to be taken note of is as to whether the contents as available in the pleading would convey the meaning to the effect that the person who has filed the complaint, is stated to be authorised and claims to have knowledge of the same. In addition, the supporting documents which were available on the record by themselves demonstrate the fact that an authorised person, being a witness to the transaction and having knowledge of the case had instituted the complaint on behalf of the “payee” company and therefore, the requirement of [Section 142](#) of the NI Act was satisfied. In [Vinita S. Rao v. Essen Corporate Services \(P\) Ltd.](#) [[Vinita S. Rao v. Essen Corporate Services \(P\) Ltd.](#), (2015) 1 SCC 527 : (2015) 1 SCC (Civ) 558 : (2015) 1 SCC (Cri) 726] , to which one of us (the Hon'ble CJI) was a member of the Bench has accepted the pleading of such a nature to indicate the power to prosecute the complaint and knowledge of the transaction as sufficient to maintain the complaint.

22. Despite our conclusion that the documents available on record would on facts satisfy the requirement relating to delegation of power and also knowledge of the transaction by the person representing the Company in the instant case, it is also necessary for us to keep in perspective that though the case in [A.C. Narayanan \[A.C. Narayanan v. State of Maharashtra\]](#), (2014) 11 SCC 790 : (2014) 4 SCC (Civ) 343] has taken the centre stage of consideration, the facts involved therein were in the background of the complainant being an individual and the complaint filed was based on the power of attorney issued by the “payee” who was also an individual. In such an event, the manner in which the power was being exercised was to be explicitly stated so as to establish the right of the person prosecuting the complaint, to



represent the payee i.e. the complainant. The position that would emerge when the complainant is a company or a corporate entity will have to be viewed from a different standpoint.

23. In this regard in Samrat Shipping Co. (P) Ltd. v. Dolly George [Samrat Shipping Co. (P) Ltd. v. Dolly George, (2002) 9 SCC 455 : 2003 SCC (Cri) 1224] , while disapproving the manner in which cognizance was refused to be taken and the complaint had been dismissed by the learned Magistrate at the threshold, this Court has held as hereunder : (SCC p. 456, para 3)

“3. Having heard both sides we find it difficult to support the orders challenged before us. A company can file a complaint only through human agency. The person who presented the complaint on behalf of the Company claimed that he is the authorised representative of the company. Prima facie, the trial court should have accepted it at the time when a complaint was presented. If it is a matter of evidence when the accused disputed the authority of the said individual to present the complaint, opportunity should have been given to the complainant to prove the same, but that opportunity need be given only when the trial commences. The dismissal of the complaint at the threshold on the premise that the individual has not produced certified copy of the resolution appears to be too hasty an action. We, therefore, set aside the impugned orders and direct the trial court to proceed with the trial and dispose of it in accordance with law. Parties are directed to appear before the trial court on 31-1-2000.”

25. In that view, the position that would emerge is that when a company is the payee of the cheque based on which a complaint is filed under [Section 138](#) of the NI Act, the complainant necessarily should be the company which would be represented by an employee who is authorised. Prima facie, in such a situation the indication in the complaint and the sworn statement (either orally or by affidavit) to the effect that the complainant (Company) is represented by an authorised person who has knowledge, would be sufficient. The employment of



the terms “specific assertion as to the knowledge of the power-of- attorney holder” and such assertion about knowledge should be “said explicitly” as stated in [A.C. Narayanan \[A.C. Narayanan v. State of Maharashtra, \(2014\) 11 SCC 790 : \(2014\) 4 SCC \(Civ\) 343\]](#) cannot be understood to mean that the assertion should be in any particular manner, much less only in the manner understood by the accused in the case. All that is necessary is to demonstrate before the learned Magistrate that the complaint filed is in the name of the “payee” and if the person who is prosecuting the complaint is different from the payee, the authorisation therefor and that the contents of the complaint are within his knowledge. When, the complainant/payee is a company, an authorised employee can represent the company. Such averment and prima facie material is sufficient for the learned Magistrate to take cognizance and issue process. If at all, there is any serious dispute with regard to the person prosecuting the complaint not being authorised or if it is to be demonstrated that the person who filed the complaint has no knowledge of the transaction and, as such that person could not have instituted and prosecuted the complaint, it would be open for the accused to dispute the position and establish the same during the course of the trial. As noted in [Samrat Shipping Co. \[Samrat Shipping Co. \(P\) Ltd. v. Dolly George, \(2002\) 9 SCC 455 : 2003 SCC \(Cri\) 1224\]](#) , dismissal of a complaint at the threshold by the Magistrate on the question of authorisation, would not be justified. Similarly, we are of the view that in such circumstances entertaining a petition under Section 482 to quash the order taking cognizance by the Magistrate would be unjustified when the issue of proper authorisation and knowledge can only be an issue for trial.

26. 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 482CrPC and quashing the order dated 5-11-2015, taking cognizance of the complaint filed by the appellant.” (emphasis supplied)

21. It could thus be seen that this Court distinguished the position of a complainant filing a complaint on



behalf of an individual from the position of a complainant filing a complaint on behalf of a company. This Court clarified that although the decision in the case of [A.C. Narayanan](#) (supra) had taken centre stage, the facts involved in that case were in the background that the complaint filed was based on the power of attorney issued by the ‘payee’ who was also an individual. In such cases, the manner in which the power was being exercised had to be explicitly stated. However, this Court clarified that the position that would emerge when the complainant is a company or a corporate entity will have to be viewed from a different standpoint. This Court held that when the company is the payee of the cheque based on which a complaint is filed under [Section 138](#) of the NI Act, the complainant should necessarily be the company which is to be represented by an authorised employee and in such a situation, the indication in the complaint and the sworn statement, oral or by affidavit, to the effect that complainant is represented by an authorised person who has knowledge, would be sufficient. Drawing a distinction from the “specific assertion as to the knowledge of the power-of-attorney holder” which is to be “stated explicitly” as categorically laid down in [A.C. Narayanan](#) (supra), this Court held that in cases where the payee/complainant is the company, all that is necessary to be demonstrated before the Magistrate is that the complaint is filed in the name of the payee and if the complaint is being prosecuted by someone other than the payee, he has knowledge of the contents of the complaint and he is duly authorised to prosecute the complaint. This Court further clarified that if there is any dispute with regard to the person prosecuting the complaint not being authorised or it is to be demonstrated that the complainant had no knowledge of the transaction, and as such could not have instituted and prosecuted the complaint, it would be open for the accused person to dispute the position and establish the same during the course of the trial. However, dismissal or quashing of the complaint at the threshold would not be justified. It was held that the issue of proper authorisation and knowledge can only be an issue for trial.



27. We find that judgment passed by the High Court is entirely based on the guidelines laid down in A.C. Narayanan (supra). Although the High Court took note of the decision in TRL Krosaki Refractories Limited (supra), the sole reason on which it passed the impugned order was that there was no specific pleading in the Letter of Authority or the affidavit of the power of attorney holder under Section 200 of the Cr.P.C. to the effect that he had personal knowledge of the facts giving rise to the proceedings under Section 138 of the NI Act and further that complaint was totally silent as to any such personal knowledge.”

30. The Hon’ble Supreme Court has thus considered the law laid down in the case of **AC Narayanan Vs. State of Maharashtra (2014) 11 SCC** wherein it was held that in cases where the payee/complainant is the company, all that is necessary is to file complaint in the name of the payee and if the complaint is being prosecuted by someone other than the payee, it is to be demonstrate that he had knowledge of the contents of the complaint and is duly authorized to prosecute the complaint. The Court also took notice of the fact that it was clarified by the Court in case of any dispute with regard to persons prosecuting the complaint not being authorized or demonstrated of having lodged complaint without knowledge of the transaction, then it was left open for the accused persons to dispute the position and establish the same during the course of the



trial. The Court bearing the aforesaid legal position while appreciating the case on hand, observed that the cheque which was the subject matter of complaint was issued in the name of the firm “Naresh Potteries”. The perusal of the complaint reveal that it has been filed in the name of “M/s. Naresh Potteries through Neeraj Kumar (Manager and authority letter holder)”. The Court in para 27 has further recorded that the said Neeraj Kumar was the power of attorney holder as being the Manager of the appellant firm and was also involved in day to day business. The Court was therefore, of the view that essential requirements of Section 142 of the N.I Act were established. While concluding, the Court observed that in case of **TRL Krosaki Refractories Limited (supra)**, it has been categorically laid down that what can be treated as an explicit averment, cannot be put in a straitjacket but will have to be gathered from the circumstances and the manner in which it has been averred and conveyed, based on facts of each case.

31. Bearing in mind the aforesaid legal principles laid down by the Hon’ble Supreme Court in the aforesaid decision, if the facts of the present case are examined, on close reading of the contents of the legal notice, the original complaint and the deposition, in light of the documents produced on record at Exh. 7 which is the copy of licence issued in the name of the partners of the firm M/s Laxmi



Finance, it clearly transpires that the signatory of the complaint namely Dahayabhai Rameshbhai Patel was one of the active partner in the partnership firm “Sri Laxmi Finance”. I have further looked into the original record and proceedings more particularly the original complaint which clearly suggest that the complaint has been lodged on behalf of “Sri Laxmi Finance through its partner Sri Dahyabhai Rameshbhai Patel”, as apparent from the cause title. As pointed out by learned Advocate for the applicant, though there is absence of the stamp endorsement of Laxmi Finance where the signature has been put by the complainant however, the fact remains that at the stage of verification of the contents of the complaint, the signatory to such complaint has appeared before the learned Magistrate who has passed the order of issuance of process/summons. The statement of the signatory to the complaint on behalf of the complainant has been recorded below Exh. 1 by learned Magistrate. Below such statement the complainant has endorsed his signature “Dahyabhai Rameshbhai Patel-partner of Sri Laxmi Finance”. With such material on record in my view the learned Magistrate has duly followed the procedure envisaged under Section 190 read with Section 200 of the Code of Criminal Procedure and having satisfied about the maintainability of the complaint at the instance of said person, has called upon the accused by issuing summons.



32. As regards the contention raised by learned advocate for the applicant about the absence of the documents namely the partnership deed, the index of registration, the authorization letter issued by the partners is concerned, I have carefully considered the cross-examination of the complainant. It is required to be noted that the accused has chosen not to respond to the legal notice issued by the partner of the partnership firm. At the very outset the accused has failed to take defence of initiation of proceedings at the instance of said partner. It is also required to be noted that on close perusal of cross-examination of the complainant, the complainant has referred to the document shown to him at Exh. 7 wherein he has admitted the fact that the person who had signed the complaint and given deposition has been mentioned partner of the complainant firm. I have relooked into the aforesaid document and it clearly indicates that the license was issued in the name of various persons including the signatory of the original complaint to run the business in the name of Sri Laxmi Finance. With such material on record and in absence of any challenge being made with regard to the status of the person being partner of the partnership firm, this Court finds no illegality or perversity in the concurrent findings of both the Courts below.

33. On the contrary, on overall appreciation of evidence on record and in view of the principles laid down by the Hon'ble



Supreme Court in the case of **M/s. Naresh Potteries (supra)**, it can be culled out that the applicant was an active partner of the partnership firm and was well conversant with the transaction, which led to the issuance of cheque to the respondent firm which eventually led to the initiation of criminal proceedings against the accused. Therefore, it is abundantly clear that the complaint lodged on behalf of the partnership firm through its partner satisfies the requirement of Section 142 of the N.I Act. As regards the contention of legally enforceable debt is concerned, admittedly, there is no challenge to the foundational fact like issuance of cheque, contents of cheque and signature of the accused on the cheque. In view thereof, no error can be found with the approach of the Courts below in raising the presumption against the accused by relying upon the provisions of Section 118 and Section 139 of the N.I Act 1881, in the facts of the case. It is also not in dispute that the accused has chosen not to respond to the legal notice given by the partnership firm. In view thereof, the Courts below have rightly followed the principles laid down by Hon'ble Supreme Court in the case of **Rangappa (supra)**. Considering the aforesaid position on record this Court is not inclined to interfere with the concurrent findings and reasons assigned by the Courts below on the aforesaid issue.

34. The last issue of service of legal notice upon the



accused so raised, in my view the findings and reasons recorded by the learned Magistrate and the principles laid down by the Hon'ble Court in the case of **C.C.Alvi Haji (supra)**, does not call for any interference. The aforesaid issue being meritless is not entertained.

Conclusion:

35. For the foregoing reasons, the present Criminal Revision Application fails and is hereby dismissed.

36. After the order was pronounced, learned advocate for the petitioner has prayed for extension of period of suspension as passed by this Court at the stage of admission of the present Revision application on 24.10.2018. It was pointed out that pursuant to the aforesaid order, the applicant original accused has been enlarged on bail and all throughout he has remained on bail.

37. Considering the aforesaid request of learned advocate for the petitioner and having noted that the suspension order passed by this Court at the stage of admission hearing has continued all throughout pending the hearing of the Revision application, the order dated 25.10.2018 passed by this Court in the present proceedings suspending the sentence imposed by the impugned judgment and order passed by the Courts below, is hereby stayed for further



period of 30 days from the date of receipt of this order.

38. With these observations, the Revision Application stands disposed of. The Record and Proceedings are directed to be sent back forthwith to the concerned Courts.

sd/-

(NISHA M. THAKORE,J)

MARY VADAKKAN