

I.P.C., Police Station Fazalganj, District Kanpur Nagar, pending in the court of Additional Chief Metropolitan Magistrate, Court No. VIII, Kanpur Nagar, are hereby quashed.

19. The present Application u/s 482 thus is **allowed**, subject to payment of cost to be deposited by the parties before the High Court Legal Services Committee, Allahabad. Such cost has to be imposed to let the parties (in this case) in particular and the society in general know that the courts cannot remain a mute spectator to unscrupulous and errant behaviour of certain persons. A society that will allow its members to misuse its courts, will ultimately suffer and pay a huge cost. Litigants, both genuine and bogus, will always continue to stand in a common queue. The courts have no mechanism to pre-identify and distinguish between the genuine and the bogus litigants. That differentiation emerges only after the hearing is concluded in any case and hearing requires time. In fact, even if the courts were to take punitive action against a bogus litigant, then, being bound by rules of procedure and fairness, such cases are likely to take more time than a case of two genuine litigants. Cost in the present case is quantified to Rs. 5,000/- (2,500 on each party) to be deposited before the High Court Legal Services Committee, Allahabad, within a period of three weeks from today.

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(2024) 12 ILRA 18

**ORIGINAL JURISDICTION  
CRIMINAL SIDE**

**DATED: ALLAHABAD 13.12.2024**

**BEFORE**

**THE HON'BLE ARUN KUMAR SINGH  
DESHWAL, J.**

Application U/S 482 No. 23721 of 2024  
With  
Application U/S 482 No. 28869 of 2024

**Jitendra Kumar Mangla                      ...Applicant  
Versus  
State of U.P. & Anr.                      ...Opposite Parties**

**Counsel for the Applicant:**  
Bhuvnesh Kumar Singh

**Counsel for the Opposite Parties:**  
G.A.

**A. Criminal Law -Criminal Procedure Code.1973-Section 482-Negotiable Instrument Act, 1881- Section 138-quashing of proceedings related to complaints filed u/s 138 of N.I.Act for cheque dishonor-Held, the power of attorney holder cannot file a complaint u/s 138 of NI Act in their own name but can represent the payee-adequate averments in the complaint established that the power of attorney holder had sufficient knowledge of the transaction, making the proceedings valid-Hence, the complaint filed by the power of attorney holder in their own name is legally untenable-Proceedings quashed, with liberty to file a fresh complaint in compliance with legal requirements.(Para 1 to 25)**

**B. Complaint u/s 138 N.I. Act can be filed by the power of attorney holder of payee or holder in due course. However, the Power of Attorney holder cannot depose or verify on oath as complainant unless from the averments, including verification of the affidavit filed in support of the complaint as well as from the supporting document, it must be clear that power of attorney holder has knowledge about the fact mentioned in the complaint regarding the transaction. if the accused disputes the knowledge of the fact of the power of attorney holder or his authority, the same can be considered during the trial but the proceeding cannot be quashed on this ground. The transaction should be within the knowledge of the Power of attorney**

**holder means and include int the transaction which created liability for which the cheque was issued. (Para 19)**

**The applications are partly allowed.**

**List of Cases cited:**

1. A.C. Narayana & anr. Vs St. of Mah. & Anr.(2014) 11 SCC 790
2. M/s Arti Indus. Vs St. of U.P., Appl. u/s 482 No. 29906 of 2022
3. Janki Vashdeo Bhojwani Vs IndusInd Bank Ltd. (2005) 2 SCC 217
4. M/s TRL Krosaki Refractories Ltd. Vs M/s SMS Asia Pvt. Ltd.. (2022) 7 SCC 612
5. Vinita S. Rao Vs M/s Essen Corporate Services Pvt. Ltd. & anr.(2015) 1 SCC 527

(Delivered by Hon'ble Arun Kumar Singh  
Deshwal, J.)

1. Heard Sri Bhuvnesh Kumar Singh, learned counsel for the applicant in Application u/s 482 No. 23721 of 2024; Sri Saurabh Yadav, learned counsel for the applicant and Sri Lalit Kr. Srivastava, learned counsel for opposite party No.2 in Application u/s 482 No. 28869 of 2024 as well as Sri Pankaj Saxena, learned A.G.A. for the State.

2. Application u/s 482 No. 23721 of 2024 has been filed seeking quashing of the entire proceeding of Complaint Case No. 3255 of 2016 (Vineeta Goyal vs. Jitendra Kumar Mangla), under Section 138 N.I. Act, P.S. Hari Parvat, District Agra, including the summoning order dated 1.12.2016.

3. Application u/s 482 No. 28869 of 2024 has been filed seeking following reliefs:-

*"1. Quash the summoning order dated 22.10.2018 and order dated 16.07.2024 by means of which N.B.W. has been issued against the applicant as well as the entire proceedings of the case No. 602 of 2018 under section 138 of the Negotiable Instruments Act (Ranveer Singh vs. Jitendra Kumar Mangla) P.S. Hariparvat District Agra pending in the court of Additional Chief Judicial Magistrate, Court No.-5, Agra.*

*2. Club the proceedings of the two cases belonging to the same transactions i.e. Complaint Case No. 602 of 2018 (Ranveer Singh vs. Jitendra Kumar Mangla) and 912 of 2018 (Ranveer Singh vs. Jitendra Kumar Mangla) and may be tried at one trial."*

4. Sri Saurabh Yadav, learned counsel for the applicant in Application u/s 482 No. 28869 of 2024, has submitted that the impugned complaint has been filed by the Power of attorney holder in his name, though the complaint under Section 138 N.I. Act can be filed on behalf of the payee or holder in due course of the cheque, not the power of attorney in his name. His second contention is that from the bare perusal of the complaint, it is clear that there is no averment in the complaint that the power of attorney holder had knowledge of the transaction in question. It is also submitted that the transaction means the transfer of money as well as the handing over of the cheque in lieu of payment of that money. It is also submitted that in this case, the father of the complainant was the power of attorney holder, but he filed the complaint in his name instead of filing the same in the name of the payee or holder in due course.

5. In support of his contention, learned counsel for the applicant has relied upon

the judgement of Apex Court in the Case of *A.C. Narayana and another vs. State of Maharashtra and another; (2014) 11 SCC 790*, paragraphs No. 15, 19, 20, 21, 22, 23, 24, wherein the Apex Court observed that the complaint could be filed by the power of attorney holder on behalf of the payee and not in his name and also that 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.

6. Learned counsel for the applicant in has also relied upon the judgment of the coordinate Bench in *M/s Arti Industries vs. State of U.P.; Application u/s 482 No. 29906 of 2022*; paragraphs No. 22, 23, 24 and also the judgement of the Apex Court in *Janki Vashdeo Bhojwani vs. IndusInd Bank Ltd.; (2005) 2 SCC 217*; paragraphs No. 10, 11, 13 & 15.

7. Similarly, Sri Bhuvnesh Kr. Singh, learned counsel for the applicant in Application u/s 482 No. 23721 of 2024, also argued that the power of attorney holder, even if a near relative of the payee, cannot file the complaint unless there is specific averment regarding his personal knowledge about the transaction in question. It is further submitted that merely mentioning in the verification clause that the power of attorney holder has personal knowledge about the fact mentioned in the affidavit of the statement will not be sufficient.

8. Per contra, Sri Pankaj Saxena, learned A.G.A. for the State, has heavily relied upon paragraph No.21 of the judgement in *A.C. Narayan (supra)* and admitted the fact that the power of attorney holder cannot file a complaint in his name. However, the same can be filed in the name

of the payee or holder in due course. Learned A.G.A. further contended that so far as the knowledge of power of attorney holder is concerned, there is no requirement that there must be specific averment in the complaint itself regarding its personal knowledge about the transaction of money as well as handing over of the cheque and it is sufficient if on the basis of supporting document and other surrounding facts it is clear that the power of attorney holder has knowledge about the transaction then the complaint is maintainable on behalf of the power of attorney holder.

9. In support of his contention, learned A.G.A. has relied upon the judgement of the Apex Court in the case of *M/s TRL Krosaki Refractories Ltd. Vs. M/s SMS Asia Private Ltd.. (2022) 7 SCC 612*; paragraphs No. 12, 13 & 14 as well as the judgement in *Vinita S. Rao vs. M/s Essen Corporate Services Pvt. Ltd. And another.; (2015) 1 SCC 527*; (paragraphs No. 16 & 19) wherein the Apex Court observed that if the complaint is filed by the husband then sufficient knowledge of transaction can be gathered from the supporting documents and surrounding circumstances including the verification clause of complaint and that would be sufficient for the maintainability of complaint on behalf of the power of attorney holder.

10. The learned A.G.A. also submitted that knowledge of the transaction to the power of attorney holder means the transaction of handing over the cheque and not the transfer of money prior to handing over of the cheque.

11. Learned counsel for opposite party No.2 in Application u/s 482 No. 28869 of 2024 has submitted that being father of the complainant power of attorney holder had

knowledge of the transaction of allotment of flat to his son, when that transaction could not be materialized then the applicant gave the cheque in question to return the money which he took in advance at the time of booking of flat and he had also given notice after bouncing of the cheque on behalf of the payee.

12. After hearing the rival submissions of learned counsel for the parties and on the perusal of the record, following questions arise for consideration:-

(i). *Whether the power of attorney holder of payee or holder in due course can file a complaint under Section 138 N.I. Act in his name?*

(ii) *Whether the power of attorney holder can file a complaint under Section 138 N.I. Act on behalf of the payee or holder in due course, if yes, what is the necessary requirement for filing such a complaint?*

(iii) *Which transaction should be within the knowledge of the Power of attorney holder.*

13. So far as the first question is concerned the Apex Court, in the case of **A.C. Narayan (supra)**, has already observed that the power of attorney holder cannot file a complaint in his own name as if he was the complainant, but he can initiate criminal proceeding on behalf of his principal. Paragraph No.31 of **A.C. Narayan (supra)** is quoted as under:-

*“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.”*

14. Given the above legal position, this Court holds that the power of attorney holder of the payee or holder in due course cannot file a complaint in his name as if he was complainant.

15. So far as the second question is concerned, this issue is no more res integra. Apex Court in the case of **Janki Vashdeo Bhojwani (supra)** considered this issue and observed that the Power of attorney holder can act on behalf of the Principal, therefore, he can file complaint on behalf of his Principal, but cannot depose for the principal on the facts which were in personal knowledge of the principal. Paragraph No.13 of **Janki Vashdeo Bhojwani (supra)** is being quoted as under:-

*“13. Order 3 Rules 1 and 2 CPC empower the holder of power of attorney to “act” on behalf of the principal. In our view the word “acts” employed in Order 3 Rules 1 and 2 CPC confines only to in respect of “acts” done by the power-of-attorney holder in exercise of power granted by the instrument. The term “acts” would not include deposing in place and instead of the principal. In other words, if the power-of-attorney holder has rendered*

*some “acts” in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.”*

16. Apex Court again considered this issue in the case of *A.C. Narayan (supra)* and observed that the power of attorney holder of payee or holder in dues course can file a complaint under Section 138 N.I. Act. It is further observed that the power of attorney holder can also depose and verify on oath before the court to prove the contents of the complaint, subject to the condition that the power of attorney holder either must have witnessed the transaction or possessed due knowledge regarding the transaction and this fact must be explicitly mentioned in the complaint. It is further observed that if power of attorney holder has no knowledge of the transaction then he cannot be examined as a witness. Paragraphs No. 28, 29, 30, 33 of *A.C. Narayan (supra)* are quoted as under.

*“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.*

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

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 of his witness upon oath for taking the decision whether or not to issue process on the complaint under Section 138 of the NI Act.*

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

17. The judgement of **A.C. Narayan (supra)** was again considered by the Apex Court in the case of **M/s TRL Krosaki Refractories Ltd. (supra)**. It was observed that the assertion about the knowledge should be said explicitly as stated in **A.C. Narayan (supra)** cannot be understood to mean that assertion should be in any particular manner and what is required is if the complaint is filed in the name of payee

and if the person who is prosecuting the complaint is different from the payee, the authorization thereof and the contents of the complaint are within his knowledge. If there is a dispute regarding proper authorization or knowledge of transaction to the power of attorney holder, then it would be open for the accused to dispute authorization during the course of trial and quashing of the complaint on such ground is not justified as the proper authorization and knowledge of the fact can only be an issue for trial. Paragraph No. 25 of *M/s TRL Krosaki Refractories Ltd. (supra)* is quoted as under:-

*“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.”*

18. It is further observed by the Apex Court that what can be an explicit averment cannot be determined in a straight jacket but will have to gather from the circumstances and the manner in which it has been averred and conveyed, considering the entire complaint, its verification and other supporting documents, filed along with the complaint. Paragraphs No. 21 of *M/s TRL Krosaki Refractories Ltd. (supra)* are quoted as under:-

*“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.”*

19. From the legal position discussed above, two questions which were framed above are answered as follows:-

**(i). That the power of attorney holder cannot file a complaint in his**

**name as if he was the complainant and he can prosecute only on behalf of his Principal;**

**(ii) Complaint u/s 138 N.I. Act can be filed by the power of attorney holder of payee or holder in due course. However, the Power of attorney holder cannot depose or verify on oath as complainant unless from the averments, including the verification of the affidavit filed in support of the complaint as well as from the supporting document, it must be clear that power of attorney holder has knowledge about the fact mentioned in the complaint regarding the transaction. If the accused disputes the knowledge of the fact of the power of attorney holder or his authority, the same can be considered during the trial but the proceeding cannot be quashed on this ground.**

**(iii) The transaction should be within the knowledge of the Power of attorney holder means and include in the transaction which created liability for which the cheque was issued.**

20. Coming back to the facts of Application u/s 482 No. 23721 of 2024, it is clear that in this case, the Power of attorney holder of the complainant has mentioned in paragraph No.1 of the complaint that he is well aware of the facts of the case and in the paragraph No.7 of the complaint the power of attorney holder has mentioned that he is also the witness of the complaint in the present case. Paragraphs No. 1 & 7 of the complaint dated 6.7.2016 are being quoted as under:-

*“1. That, Complainant is Proprietor of M/S Shyam Lal Baikuntnath Designs, Awas Vikas Colony, Agra and knows the accused very well since a long time. The present complaint is being filed*

by Sri Mukund Goyal S/O Late Om Prakash Goyal as stated above, who has been authorized by Complainant by way of Power of Attorney dated 06/07/2016 to file and pursue the case noted above in the appropriate Court and **very well aware with the facts of case.**

7- That under the circumstances accused is liable to be prosecuted as stated above. **The witnesses of the the complainant are, she herself, Sri Mukono Goyal, officers and staff of banks and post offices concern and Sri Ravi Gupta Adv.**”

21. Similarly, in the statement filed on an affidavit under Section 200 Cr.P.C., the power of attorney holder of the complainant again stated in paragraph No.1 that he is well aware of the facts of the case and then again in the verification part, he has mentioned that he has personal knowledge of the fact mentioned in paragraphs No. 1 to 7 of the affidavit. Paragraph No.1 of the statement u/s 200 Cr.P.C., as well as verification of the statement affidavit are quoted as under:-

“1. That, Complainant is Proprietor of M/S Shyam Lal Baikuntnath Designs, Awas Vikas Colony, Agra and knows the accused very well since a long time. The present complaint is being filed by deponent, who has been authorize by Complainant by way of Power of Attorney dated 06/07/2016 to file and pursue the case noted above in the appropriate Court and **very well knows the facts of case.**

#### Verification

**The contents of Para 1 to Para 7 are true to the personal knowledge of the deponent, nothing has been concealed therein. Verified at Civil Courts Agra on 06/07/2016.**”

22. From the Power of attorney, it is also clear that the power of attorney holder is the husband of the complainant, who works with her and is well aware of the facts of the case. The power of attorney is being quoted as under:-

#### **“ POWER OF ATTORNEY**

*This Power of attorney is executed on this day 6th day of July 2016 by Mrs. Vineeta Goyal, Proprietor -M/S Shyamlal Baikunth Nath Designs, Awas Vikas Colony, Agra, as the executant is a Business professional and always busy in her Business and domestic work.*

#### **In Favour of**

**Szi Mukund Goyal S/O Late Szi Om Prakash Goyal R/O 5/89, Madia Fatra, Agra, who is husband of executant and works with her and well aware with the facts of the case.**

*Who shall have all the powers to act and appear on behalf of executant of this power of Attorney before the Courts and do all acts, to engage lawyer, to file case and do all acts that may be necessary for carrying out the proceedings on behalf of executant against Jitendra Kumar Mangla.*

*The executant has put her signature on this Power of Attorney.”*

23. From the perusal of the order sheet, it also appears that the applicant accused has not appeared before the court below in the complaint proceeding despite the issuance of coercive measures. Therefore, the complainant could not be examined or cross-examined by the applicant-accused so that more facts regarding knowledge of the power of attorney holder about the transaction could come out on record. In the case of **Vinita S. Rao (supra)**, the Apex Court already considered this issue and observed that if

the husband is the power of attorney holder of his wife, then it could be presumed that he had witnessed all the transactions and possessed due knowledge about them. Paragraphs No. 17 & 18 of *Vinita S. Rao (supra)* is quoted as under:-

*“17. Thus, it is clear that the complaint under Section 138 of the NI Act can be filed through the power-of-attorney holder. In this case, Sudhir Gulvady is the power-of-attorney holder of the appellant and he has filed the complaint on her behalf. The learned Magistrate recorded the statement of the power-of-attorney holder under Section 200 of the Code on 5-3-2004 and issued summons. We have perused the said statement. It is signed by the power-of-attorney holder and by the learned Magistrate. A.C. Narayanan [A.C. Narayanan v. State of Maharashtra, (2014) 11 SCC 790 : (2014) 4 SCC (Civ) 343 : AIR 2014 SC 630] states that power-of-attorney holder must have knowledge about the relevant transactions. There can be no dispute about the fact that in this case, the power-of-attorney holder being the husband of the appellant has witnessed all transactions and he possesses due knowledge about them. He is associated with all transactions at all crucial stages. The appellant has placed this fact in the forefront in her complaint. The relevant paragraph of the complaint reads as under:*

*“3. The complainant is represented by her power-of-attorney holder Mr Sudhir Gulvady, her husband, as the complainant is unable to come to the court due to her not keeping good health and the whole transaction is also within the knowledge of her power-of-attorney holder who is her husband.”*

*18. The appellant has examined herself on oath. In her evidence, she has stated that the office of the respondents is*

*in the same building in which her husband's office is situated and her husband being acquainted with Respondent 2, who is the Managing Director of Respondent 1, he was aware that Respondent 2 was functioning as a broker and, hence, she along with her husband had initial discussion with Respondent 2 for transactions in 10,000 shares. Her evidence substantiates her case that her husband had knowledge about the entire transaction. Hence, the submission that the complaint could not have been filed through power-of-attorney holder must fail.”*

24. From the above fact, it is clear that for the prima facie issuance of process, there are sufficient averments on record regarding knowledge of the Power of attorney holder about the transaction. Even otherwise, the Apex Court has already observed in the case of *M/s TRL Krosaki Refractories Ltd. (supra)* that if there is some dispute about the knowledge of the transaction on the part of the power of attorney holder, that ground can be taken during trial but cannot be a ground to quash the impugned proceeding.

25. In view of the above, this Court does not find any illegality in the impugned proceeding, challenged in application u/s 482 No. 23721 of 2024. Accordingly, the same is **dismissed**.

26. Coming to the fact of Application u/s 482 No. 28869 of 2024, in this case, as per the complaint, a cheque of Rs. 10 Lakh was given by the applicant in the name of Pankaj Singh who executed power of attorney in favour of opposite party No.2. On presenting that cheque before the bank, same was returned with the endorsement “fund insufficient” on 14.12.2017.

Information of the same was given by the bank to the payee, Pankaj Singh, on 16.12.2017. After that, a registered notice was sent to the applicant by the Advocate of payee Pankaj Singh through registered post on 8.1.2018, which was received by the applicant on 9.1.2018. However, despite the expiry of 15 days from the date of service, the cheque amount was not paid by the applicant. Therefore, the complaint was filed against the applicant on 12.2.2018 by Pankaj Singh through his power of attorney holder Ranveer Singh, also the father of Pankaj Singh. From a perusal of the impugned complaint, it is not in dispute that impugned complaint was filed by the power of attorney holder of payee Ranveer Singh in his own name instead of filing in the name of complainant Pankaj Singh, which is not permissible under the law as observed above. Therefore, this Application deserves to be allowed.

27. Accordingly, the application u/s 482 No. 28869 of 2024 is **allowed**. The impugned proceeding arising out of Case No. 602 of 2018 (*Ranveer Singh vs. Jitendra Kumar Mangla*), under Section 138 N.I. Act, P.S. Hariparvat District Agra is hereby quashed. However, the complainant, Pankaj Singh, is at liberty to file a fresh complaint in accordance with law.

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(2024) 12 ILRA 28

APPELLATE JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 18.12.2024

BEFORE

THE HON'BLE ASHUTOSH SRIVASTAVA, J.

Criminal Misc. Bail Cancellation Application No.  
475 of 2024

**Yogesh Kumar Garg** ...Applicant  
**Versus**  
**State of U.P. & Anr.** ...Opposite Parties

**Counsel for the Applicant:**  
Siddhartha Srivastava

**Counsel for the Opposite Parties:**  
G.A.

**Criminal Law - Indian Penal Code, 1860 – Sections 420, 467, 468, 471, 406, 504, 506 & 120B - Against grant of bail - Maintainability - Jurisdiction - The Code of Criminal Procedure, 1973 - Section 362 - Applicant/first informant moved bail cancellation application before Sessions Court on ground that conditions imposed by Court of Sessions for grant of bail had not complied with inasmuch as amount of Rs.42 lacs as undertaken by opposite party No. 2 to be deposited not deposited and only Rs.4 lacs deposited during pendency of bail cancellation application - Application rejected - Impugned order. (Para 3, 4)**

**Held, applicant already approached Court of Sessions seeking cancellation of bail granted u/s 439 (2) Cr.P.C - The Court of Sessions refused to cancel bail already granted - In opinion of Court, applicant having exercised his option to seek cancellation u/s 439 (2) Cr.P.C. before Court of Sessions can't now approach High Court by moving another bail cancellation application u/s 439 (2) Cr.P.C - Thus, order passed by Court of Sessions can be challenged before High Court in application u/s 482 Cr.P.C. (Para 15, 19)**

**Bail cancellation application dismissed. (E-13)**

**List of Cases cited:**

1. Himanshu Sharma Vs St. of M.P. reported in 2024 (4) SCC 222
2. Gurcharan Singh Vs St. (UT of Delhi) reported in 1978 (1) SCC 118, (Para 16)