

M/S Naresh Potteries vs M/S Aarti Industries on 2 January, 2025

Author: B.R. Gavai

Bench: B.R. Gavai

2025 INSC 1

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2025
(Arising out of SLP (Crl.) No. 8659 of 2023)

M/S NARESH POTTERIES

...APPELLANT(S)

VERSUS

M/S AARTI INDUSTRIES
AND ANOTHER

...RESPONDENT(S)

JUDGMENT

B.R. GAVAI, J.

1. Leave granted.

2. This appeal challenges the judgment and final order dated 12th April 2023 passed by the learned Single Judge of the High Court of Judicature at Allahabad in Criminal Miscellaneous Application No. 29906 of 2022. The learned Single Judge allowed the Criminal Miscellaneous Application filed by M/s Aarti Industries, Respondent No. 1 herein and quashed the summoning order dated 22nd November 2021 passed by the Additional Chief Judicial Magistrate, Khurja, 12:39:14 IST Reason:

Bulandshahar¹ in Complaint Case No. 701 of 2021, as well as the entire proceedings arising from the said complaint case filed by the present appellant under Section 138 of the Negotiable Instruments Act, 1881², pending before the trial court in C.N.R. No. UPBU160012972021.

3. The facts giving rise to the present appeal are as follows:

3.1. M/s Naresh Properties through its Manager Neeraj Kumar, appellant herein, deals in the manufacture and sale of crockeries, insulators, polymer insulators and other such hardware fittings.

3.2. Between the period from 18th June 2021 to 2nd July 2021, M/s Aarti Industries represented by its sole proprietor Sunita Devi, Respondent No. 1 herein, had purchased polymer insulators scrap rejected material, worth Rs. 1,70,46,314/-

from the present appellant. After the materials were supplied to Respondent No.1, the appellant raised several bills/invoices seeking payment for the supplied goods.

3.3. Subsequently, on 12th July 2021, the appellant was given a cheque issued in its favour by Respondent No.1 for a sum of 1 Hereinafter referred to as 'trial court'. 2 For short 'NI Act' Rs.1,70,46,314/-. The said cheque bearing No. 086295 dated 10th July 2021 had been drawn on the A/c No. 3640670725 belonging to M/s Aarti Industries at the Central Bank of India, Branch Khurja.

3.4. Upon receiving the said cheque, the appellant deposited it in its A/c No. 07382560000285 at HDFC Bank, Branch Khurja on 12th July 2021 for encashment. However, the cheque came to be dishonoured and on 13th July 2021, the cheque was returned to the appellant with a return memo which stated that the cheque amount 'exceeds arrangement'. 3.5. Aggrieved thereby, on behalf of Smt. Shakti Khanna, the owner/proprietor of the appellant-firm, a legal notice dated 15th July 2021 was issued to Respondent No.1 through its sole proprietor, Sunita Devi under the NI Act. According to the legal notice, Respondent No.1 was to pay the cheque amount of Rs. 1,70,46,314/- within a period of 15 days of receiving the notice, failing which the offence punishable under Section 138 of the NI Act was liable to be attracted.

3.6. Immediately thereafter, on 16th July 2021, as a counter blast to the legal notice, Angad the son of the sole proprietor of Respondent No.1 lodged a First Information Report under Sections 420, 467, 468 and 471 of the Indian Penal Code, 1860 against 7 accused persons. It was alleged that Ashish Khanna, the owner of the appellant-firm, the staff of the appellant-firm and the branch manager of the Central Bank of India, Branch Khurja had colluded together to obtain a cheque book in the name of M/s Aarti Industries by forging the signature of Sunita Devi. It was further alleged that the said cheque book containing cheques from SI No. 86281 to 86380 was thereafter used by the appellant-firm to issue two cheques

- first, cheque No. 086291 dated 10th July 2021 for a sum of Rs. 1,62,28,445/- issued in favour of Shakti Ceramics and second, cheque No. 086295 dated 10th July 2021 for a sum of Rs. 1,70,46,314/- issued in favour of the present appellant. 3.7. Subsequently, on 31st August 2021, Smt. Shakti Khanna being the sole proprietor of the appellant-firm issued a Letter of Authority thereby authorizing Sh. Neeraj Kumar, the manager and caretaker of the appellant-firm to file a complaint and take all such necessary steps in the matter of the dishonour of the cheque.

3.8. Upon being so authorized, Sh. Neeraj Kumar in the name of M/s Naresh Potteries, filed a complaint being Complaint No. 701 of 2021 under Section 138 of the NI Act on 8th September 2021 against Respondent No.1 before the trial court. Being the deponent in the aforesaid complaint, Sh. Neeraj Kumar also filed an affidavit solemnly affirming that he was well- conversant with the facts and circumstances of the facts leading to the complaint and as such was competent to file the said affidavit.

3.9. Subsequently, on 22nd October 2021, Sh. Neeraj Kumar filed an Affidavit of Evidence under Section 200 of the Code of Criminal Procedure, 1973, before the trial court wherein he reiterated the facts of the complaint case and once again, affirmed that he was well-conversant with the facts and circumstances of the case, being the manager of the appellant- firm.

3.10. On 22nd November 2021, on the basis of the evidence in the form of the aforesaid examination under Section 200 of the Cr.P.C. and the documentary evidence adduced, the trial court found that there was sufficient ground to issue summons to Sunita Devi, the sole owner/proprietor of Respondent No.1- firm for the offence punishable under Section 138 of the NI 3 For short 'Cr.P.C.' Act. Accordingly, an order was passed thereby summoning Sunita Devi to face trial for the aforesaid offence. 3.11. Aggrieved thereby, Respondent No.1 preferred a Criminal Miscellaneous Application under Section 482 of the Cr.P.C. to quash the aforesaid summoning order as well as the entire proceedings of the complaint case pending before the trial court.

3.12. The High Court by the impugned judgment and order allowed the Criminal Miscellaneous Application. 3.13. Being aggrieved thereby, the present appeal.

4. We have heard Mr. Navin Pahwa, learned Senior Counsel, appearing on behalf of the appellant and Mr. Shailesh Sharma, learned counsel, appearing on behalf of Respondent No.2.

5. In spite of being duly served, none appeared for Respondent No.1.

6. Mr. Navin Pahwa, learned Senior Counsel, submitted that the High Court had quashed the complaint case on an incorrect assumption of fact as well as an incorrect interpretation of the law laid down by this Court in TRL Krosaki Refractories Limited v. SMS Asia Private Limited and Another⁴.

7. Mr. Navin Pahwa further submitted that the High Court had quashed the criminal case on the simple ground that from a conjoint reading of the averments made in the Letter of Authority and the affidavit of evidence under Section 200 of the Cr.P.C. , Sh. Neeraj Kumar, the power of attorney holder was found to have no personal knowledge of the facts and circumstances of the case. He submitted that the only purpose of a sworn statement under Section 200 of the Cr.P.C. by the power of attorney holder who has knowledge of the facts stated in the complaint is to satisfy the court of the prima facie existence of an offence which is to be tried and the final outcome of the trial would be determined on the basis of the evidence. He submitted that, if necessary, the complainant could be called at a later stage for further examination and cross-examination. He submitted that this was beside the fact that the power of attorney holder in the present matter had on three separate occasions clearly stated that he had personal knowledge of the facts of the complaint case. 4 (2022) 7 SCC 612 : 2022 INSC 214

8. Mr. Navin Pahwa placed reliance on the judgments of this Court in the cases of Shankar Finance and Investments v. State of Andhra Pradesh and Ors.⁵, Praveen v. Mohd. Tajuddin⁶, A.C. Narayanan v. State of Maharashtra and Another⁷ and Vinita S. Rao v. Essen Corporate Services Private Limited and Another⁸. He submitted that in view of the material placed on record and the

authorities cited, the appeal deserves to be allowed and the impugned judgment and order deserves to be quashed and set aside.

9. On behalf of Respondent No.2, Mr. Shailesh Sharma, learned counsel, has submitted that the present matter is essentially a dispute between private parties. He has adopted the submissions of the appellant and has prayed that the appeal may be allowed.

10. We have considered the rival submissions and perused the material placed on record.

11. The solitary question that we are called upon to answer is as to whether the complaint filed by the appellant herein 5 (2008) 8 SCC 536 : 2008 INSC 763 6 (2009) 12 SCC 706 7 (2014) 11 SCC 790 : 2015 INSC 69 8 (2015) 1 SCC 527 : 2014 INSC 643 under Section 138 of the NI Act is in accordance with the requirement under Section 142 of the NI Act.

12. The relevant provision of the NI Act that falls for our consideration is as follows:

“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;

.....”

13. Ordinarily, under Section 190 of the Cr.P.C., a Magistrate is empowered to take cognizance of an offence upon receiving a complaint of facts which constitute such offence. Prior to taking such cognizance, in accordance with and as provided by Section 200 of the Cr.P.C., the Magistrate is required to examine upon oath the complainant and witness present, if any. However, Section 142 of the NI Act creates a legal bar on the court from taking cognizance of any offence punishable under Section 138 of the NI Act except upon a complaint, in writing, made by the payee, or as the case may be, the holder in due course of the cheque.

14. The law on the subject-matter at hand is no longer *res integra* and has been well-settled by a series of judgments passed by this Court.

15. This Court in the case of *National Small Industries Corporation Limited v. State (NCT of Delhi) and Others*⁹ 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 9 (2009) 1 SCC 407 : 2008 INSC 1308 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 a non-employee authorised and empowered to represent the company either by a resolution or by a power of attorney.

....

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.” (emphasis supplied)

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 Another¹⁰ and Janki Vashdeo Bhojwani and Another v. IndusInd Bank Limited and Others¹¹. 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)

18. This Court while answering the reference has thoroughly considered the scope and requirement of Section 142(1)(a) of the NI Act. This Court held that from a conjoint reading of Sections 138, 142 and 145 of the NI Act as well as Section 200 of the Cr.P.C., it is clear that calling upon the complainant to remain present and to examine him as to the facts contained in the affidavit submitted by the complainant to support his complaint, is a matter of discretion on the part of the Magistrate. This Court clarified that it is only if and where the Magistrate, after considering all the relevant documents, 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.

19. After discussing the discretionary powers of the Magistrate, this Court went on to hold 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. This Court, however, cautioned that an exception to the above would be when the power-of-attorney holder does not have a personal knowledge about the transactions, in which case, he cannot be examined. Nevertheless, this Court clarified that where the power-of- attorney holder of the complainant is in charge of the business of the complainant payee and the power of attorney holder alone is personally aware of the transactions, there is no reason why he cannot depose as a witness, however, such personal knowledge must be explicitly asserted in the complaint and a power-of-attorney holder who has no personal knowledge of the transactions cannot be examined as a witness in the case.

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.

22. Having discussed the law on the subject, we now proceed to consider the facts of the present case.

23. As we have noted earlier, despite being duly served, none appeared for Respondent No.1.

24. From a perusal of the impugned order, we find that the issue raised by Respondent No.1 before the High Court is that complaint filed by Sh. Neeraj Kumar on behalf of the appellant-firm has been rendered defective as there is no specific averment with regard to his knowledge about the transaction in the relevant documents. To buttress its submission, reliance was placed on the decision in the case of A.C. Narayanan (supra).

25. 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.

26. A perusal of the complaint (Annexure P-18) would reveal that Complaint No. 701 of 2021 has been filed in the name of M/s Naresh Potteries through Neeraj Kumar (Manager and Authority-letter holder). Further, a perusal of the cheque which is the subject-matter of the complaint would reveal that it has been issued in the name of Naresh Potteries. As aforementioned, Section 142 of the NI Act contemplates that the complaint filed under Section 138 of the NI Act should be in writing and should be filed by the payee or the holder of the cheque. Therefore, it is abundantly clear that the complaint in the present matter satisfies the requirements of Section 142 of the NI Act.

27. Further, a cumulative study of the relevant material being the Letter of Authority (Annexure P-9), the affidavit in support of the complaint (Annexure P-10) and the affidavit of evidence under Section 200 of the Cr.P.C. (Annexure P-11) would reveal that Sh. Neeraj Kumar, the power of attorney holder being the manager of the appellant-firm and the caretaker of its day-to-day business, was well-conversant with the transactions which led to the issuance of the cheque to the appellant-firm and which eventually led to the initiation of the criminal proceedings against Respondent No.1.

28. Since the High Court has quashed the summoning order on a categorical finding that the power of attorney holder did not have personal knowledge of the facts giving rise to the criminal proceedings as there was no specific pleading to that effect in the letter of authority and the affidavit of the power of attorney holder under Section 200 of the Cr.P.C., we find it apposite to reproduce the relevant portions of the aforesaid documents which contain averments regarding authorisation in favour of and knowledge on the part of Sh. Neeraj Kumar.

29. The Letter of Authority dated 31st August 2021 issued by the sole proprietor of the appellant-firm reads as under:

“Certified that I, Smt. Shakti Khanna, aged 72 years, w/o of Sh. Subhash Chand Khanna of M/s. Naresh Potteries, G.T. Road, Khurja 203131 (UP) in the capacity of sole proprietor of the above firm, authorize Sh. NEERAJ KUMAR s/o Sh. Suraj Narain, aged 42 years r/o H.No. 934, Chandralok Colony, Street No.4, Khurja PS, Khurja Nagar, District Bulandshahr, who is manager of the above firm and takes care of general and day-to-day managerial business of the firm and is very well conversant with everyday affairs, financial transactions and sale- purchase of the firm, to file a complaint in the matter of dishonouring of cheque (No.086295 /10.07.2021 for a sum of Rs.1,79,46,3141-) against M/s. Arti Industries, Khurja in a competent Hon'ble Court on behalf of M/s, Naresh Potteries. Khurja. Sh. Neeraj is well aware of this case and is given necessary instructions also.”

30. The verifying affidavit filed on behalf of Sh. Neeraj Kumar in support of his complaint reads as under:

“02. Deponent is applicant in this case who is posted as manager in complainant firm M/s. Naresh Potteries, GT Road, Khurja and holds authority letter of the firm issued

by the owner/proprietor Smt. Shakti Khanna and is well conversant with the facts and circumstances of the case. Thus, deponent is competent to file this affidavit.”

31. Further, the affidavit of evidence under Section 200 of the Cr.P.C. filed by Sh. Neeraj Kumar in lieu of the oral sworn statement before the trial court on the basis of which the trial court took cognizance of the complaint, reads thus:

“02. Deponent is applicant in this case who is posted as manager in complainant firm M/s. Naresh Potteries, GT Road, Khurja and holds authority letter of the firm issued by the owner Smt. Shakti Khanna and is well conversant with the facts and circumstance of the case. Thus, deponent is competent to file this affidavit.”

32. A conjoint reading of the above would make it clear that it had been categorically averred that the sole proprietor of the appellant-firm had duly authorized Sh. Neeraj Kumar to act on its behalf in view of the fact that Sh. Neeraj Kumar was in- charge of the day-to-day affairs of the appellant-firm and as such had personal knowledge of the facts of the matter.

33. As referred to above, this Court in TRL Krosaki Refractories Limited (supra) had come to a categorical finding that what can be treated as an explicit averment, cannot be put in a straightjacket but will have to be gathered from the circumstance and manner in which it has been averred and conveyed, based on the facts of each case. The relevant portion of the said decision has already been extracted above. In the instant matter, the averments made in the documents referred to above, make it wholly clear that Sh. Neeraj Kumar possessed personal knowledge of the facts of the matter at hand and was well-equipped and duly authorised to initiate criminal proceedings against Respondent No.1. That beside the fact that it would always be open for the trial court to call upon the complainant for examination and cross- examination, if and when necessary, during the course of the trial. As such, a peremptory quashing of the complaint case by the High Court is completely unwarranted and that too on an incorrect factual basis.

34. Apart from that, this Court has repeatedly cautioned that the inherent powers under Section 482 of the Cr.P.C. should be exercised sparingly and with great caution and further that inherent powers should not be used to interfere with the jurisdiction of the lower courts or to scuttle a fair investigation or prosecution. In light of the well-settled law on the subject, we do not find that the instant matter called for any interference by the High Court in exercise of its discretionary powers under Section 482 of the Cr.P.C.

35. In that view of the matter, we are of the considered view that the High Court has passed the impugned judgment and order on a completely perfunctory and erroneous reasoning which depicts absence of careful consideration. That being the case, we are inclined to allow the appeal.

36. In the result, we pass the following order:

i. The present appeal is allowed;

ii. The final judgment and order dated 12th April 2023 passed by the learned Single Judge of the High Court of Judicature at Allahabad in Criminal Miscellaneous Application No. 29906 of 2022 is quashed and set aside; and iii. The Complaint No. 701 of 2021 is restored to the file of the Additional Chief Judicial Magistrate, Khurja, Bulandshahar to be heard and decided on its own merits.

37. Pending application(s), if any, shall stand disposed of.

.....J. (B.R. GAVAI)J. (K. V. VISWANATHAN) NEW DELHI;

JANUARY 02, 2025.