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A.C. NARAYANAN vs STATE OF MAHARASHTRA¹

Jyotsana Singh²**ABSTRACT**

In the modern world where trade and industry play an important and long role, the conclusion of contracts or agreements in connection with business and other transactions has become an everyday and necessary part of everyday life. and it is more necessary that he rely on others to do his things. The hectic activity of businessmen and industrialists has made the exercise of power the delegation of their functions. Power of attorney is a legal process that creates a document that empowers another person to act as your legal representative. The client should be careful when authorising an attorney to act as a lawyer to avoid the inconvenience and expense of future legal proceedings. An important part of estate planning, but one of the most misunderstood. It is often convenient or even necessary for someone else to act on your behalf. There is a breakthrough in business and commerce as many people confuse a Power of Attorney (POA) with a will, but these documents are two very different things and they have two very different functions. Person dies A POA is valid during a person's lifetime and ends when they die.

In this commentary, the researcher has focused on three things; first, the case, second, Whether the complaint u/s 138 of N.I. Act can be filed through Power of Attorney or not, and, the third, the procedure for filling the complaint.

Facts:

In the above-mentioned case, the accused-appellant A.C. Narayanan is Vice President and Managing Director of M / s Harvest Financials Ltd. Company (hereinafter the “Company”) headquartered in Mumbai. As part of an investment plan, the appellant has collected various amounts in the form of loans from various people and in return has issued postdated cheques, either in his personal capacity or as a signatory which got dishonored.

Respondent(plaintiff) No. 2, Ms. Doreen Shaikh, is the holder of the power of attorney for six complainants (plaintiffs), namely Mr. Yunus A. Cementwalla, Mr. Fay Pinto, Mr. Mary Knoll Drego, Mr. Evelyn Drego, Mr. Shaikh Anwar Karim Bux, and Mr. Smt Gwen Piedade. On December 16, 1997 Respondent(plaintiff) No. 2 filed complaint cases No. 292 / S / 1998, 293 / S / 1998, 297 / S / 1998, 298 / S / 1998, 299 / S / 1998 on behalf of the six complainants or 300 / S / 1998 against the complainant here under Sections 138 and 142 Negotiable Instruments Act of 1881 before the Court.

¹ A.C Narayanan V. State of Maharashtra, 2013 (11) SCALE 360.

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On 4th April 1998, the court of Additional Chief Metropolitan Magistrate took cognizance and issues processed against the accused-appellant under section 204 of code of criminal procedure for the offences under Section 138 and 142 of the Negotiable Instrument, Act, 1881.

On November 29, 2000, the Trial Court rejected the complainant's application. The aggrieved complainant's applicant hopes to submit a motion to the High Court in accordance with Criminal Clause Nos. 797, 798, 799, 801, 802 and 803 of 2002, so as to obtain pending documents from the trial court. In respect to the order by Magistrate on August 12, 2005, the order the concern learned Metropolitan Magistrate were dismissed by the High Court.

Issues:

The first issue is related to the attorney's authority to sign and file a complaint request on behalf of plaintiffs and whether the eligibility criteria required by Section 142 (a) of the N.I. The act is met when the complaint request is presented in The payee's name or itself The holder of the check was answered in the affirmative by a major bank for their lawsuit in AC Narayanan against Maharashtra state. Taking a case as an instance, Vide Ashwin Nanubhai Vyas v. Maharashtra State³, the court stated that, taking into account various situations such as disability due to illness, old age or death, or residence of the beneficiary or holder at the time of the appearance and in court, testify to the complaint to prove, the agent or legal representative (s) may file a complaint and/or continue the pending criminal complaint on behalf of the beneficiary or holder in due course. stated that the agent or legal representative must be aware of the transaction in question in order to establish the veracity of the complaint/crime; Otherwise, criminal justice could not be reached if the beneficiary or the holder fails to sign, appear or declare himself a plaintiff in the MMTC (above) at that time for the reasons stated above, taking these aspects into account, the court held that a timely filing of the complaint on behalf of the beneficiary or owner sufficient compliance with section 142 of N.I. Act, 1881.

The second issue is regarding verification of the Power of Attorney holder on oath as prescribed under Section 200 of the Code of Criminal Procedure.

"In the light of the discussion, we are of the view that the power of attorney holder may be allowed to file, appear and depose for the purpose of issue of process for the offence punishable under Section 138 of the N.I. Act. An exception to the above is when the power of attorney holder of the complainant does not have a personal knowledge about the transactions then he cannot be examined. However, where the attorney holder of the complainant is in charge of the business of the complainant payee and the attorney holder alone is personally aware of the transactions, there is no reason why the

³ Ashwin Nanubhai Vyas v. State of Maharashtra , AIR 1967 SC 983.

*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."*⁴

In view of the discussion, it can be concluded that the attorney holder cannot sue in his own case as a complainant, but can initiate criminal proceedings on behalf of his client. If the beneficiary is an owning business, the complaint may be made (i) by the owner of the owning business, who is the sole owner of the "Beneficiary"; (ii) the owner company, which describes itself as a sole proprietorship, represented by its sole owner; and (iii) the owner or the asset company represented by the legal representative by virtue of a power of attorney issued by the sole proprietor.

Held: As a result, the contested judgment of the Bombay High Judicial Court of August 12, 2005 and the order of November 29, 2000, of the Additional Chief Metropolitan Magistrate, Ninth Court, Bandra, Mumbai, are set aside and the appellant's proceedings are set quashed.

Whether the complaint u/s 138 of N.I. Act can be filed through Power of Attorney or not?

A complaint under Section 138 of the Law can only be made by the beneficiary of the rejected cheque or by the holder in due course under section 142 of the law; however, this requirement has been qualified with an addendum. 138 of the Act may do so by the beneficiary through his power of attorney / duly authorised representative, as established in *Sankar Finance and Investment, v. the State AP and others*⁵ in through their power of attorney, for whose benefit they have the power of attorney or the letter of authority if the beneficiary or legal person or company incorporated under the Companies Act. Now the question arises who will file the complaint if the jurist person of the company is incapable of attending court proceedings. In that case, the complaint can be filed by a natural person with de facto of the jurist person.

Procedure for filling complaint

In the section 2d code of criminal procedure defines, "complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

⁴ *Supra* note 1, ¶ 15.

⁵ *Sankar Finance and Investment, v. The State AP and others*, (2008) 8 SCC 536.

The procedure has been enunciated in Section 200 of Code of Criminal Procedure Act, 1973. For the purpose of explain the main points in a nutshell for practical use, I'll state them in bullet points:

1. The complaint should be submitted to the first-class judicial magistrate who has the respective jurisdiction. However, in cases where the complaint is accidentally submitted to the non-competent magistrate, the magistrate is obliged to return the complaint to be submitted to the first-class judicial Magistrate, which will indicate the necessary details of the same.
2. The complaint can be either in written form or can be oral. However, it is always recommended to prefer writing.
3. Unlike the submission of the FIR, where the police, after immediately investigating the reported crime and arresting the suspect in the event of a complaint, does not proceed without questioning the complainant and the witnesses at the time the complaint was filed).
4. After that, the filling of the complaint the concerned magistrate will record the statement under section 200 CrPC of the complainant's statement. Afterwards, the concerned magistrate takes the oral and documentary evidence of the respective complainant then after, the prima facie case against the accused person will find out then take cognisance and then proceed under section 204 CrPC summoning the accused person under section 138 and 142 N.I. Act, 1881.