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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1200 OF 2004

Prabhavati Sumatilal Patni .. Petitioner
Versus
M.M. Shah Consultants Ltd & Ors. .. Respondents

WITH
CRIMINAL APPLICATION NO. 568 OF 2018

Prabhavati Sumatilal Patni
(since deceased through legal heirs)
Rajendra Sumatilal Patni and Ors. .. Applicants
Versus
M.M. Shah Consultants Ltd & Ors. .. Respondents

WITH
CRIMINAL APPLICATION NO. 569 OF 2018

Prabhavati Sumatilal Patni
(since deceased through legal heirs)
Rajendra Sumatilal Patni and Ors. .. Applicants
Versus
M.M. Shah Consultants Ltd & Ors. .. Respondents

IN
WRIT PETITION NO. 1200 OF 2004

Prabhavati Sumatilal Patni .. Petitioner
Versus
M.M. Shah Consultants Ltd & Ors. .. Respondents

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- Mr. K.P. Shah, Advocate for Petitioner and Applicants.
 - Ms. Aastha Dadhich i/by Mr. Prasad Kulkarni, Advocate for Respondent Nos. 1 & 2
 - Ms. Sangeeta E. Phad, APP for Respondent - State

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 22, 2026.

P.C.:

1. Heard Mr. Shah, learned Advocate for Petitioner and

Applicants, Ms. Dadhich, learned Advocate for Respondent No.1 & 2 and Ms. Phad, learned APP for Respondent - State.

2. At the outset it is seen that the present Writ Petition is filed and admitted in the year 2004 and thereafter never taken for hearing until until today. In the interregnum, original Petitioner expired and Criminal Application No.568 of 2018 was filed seeking to bring her legal heirs on record and condonation of delay of 10 years and 129 days for the same however inadvertently names of the legal heirs were not mentioned therefore Criminal Application No.569 of 2018 was filed seeking the same reliefs mentioning the names of her legal heirs therein. Hence, in that view of the matter Criminal Application No.568 of 2018 and Criminal Application No.569 of 2018 are both allowed for the bringing the legal heirs of the deceased Petitioner on record. Delay of 10 years 129 days stands condoned, in view of the fact that the Petition was admitted in the year 2004. Since, both Criminal Applications are allowed, Petitioner's Advocate shall carry out necessary amendments in the court's record within the period of 2 weeks from the date of uploading of this order. Reverification stands dispensed with. Department shall permit the said amendments to be carried out as directed. Writ Petition is taken for hearing forthwith. Both Criminal Applications are allowed and disposed.

3. The present Petition challenges the order dated 28.08.2003 passed by Additional Sessions Judge, Pune in Criminal Revision

Application No. 712 of 2002. The Petitioner is Respondent No.1 therein.

4. Briefly stated Petitioner is the original Complainant. She filed private complaint against Respondent No.1 under Section 138 of Negotiable Instruments Act, 1881 (for short “**NI Act**”). Respondent No.1 floated a scheme for sale of residential plot in Survey No. 125 at Aundh in Pune. They agreed for sale of plot No. 14 to Petitioner. Petitioner paid consideration of Rs.3.8 lakhs to Respondent No.1. The plot was not handed over to the Petitioner. Therefore Respondent No.1 handed over 2 cheques to her. When Petitioner deposited these 2 cheques, they were dishonored. Petitioner felt cheated and therefore approached Magistrate with a private complaint of cheating and sought issuance of process.

4.1. Magistrate’s order is dated 14.06.2002. It allows Petitioner's application for issuance of process. This order is challenged by Respondent No.1 before Sessions Court in Revision. By order dated 28.08.2003, Revision is allowed. Order passed by the Magistrate is set aside. Hence the present Petition.

5. Mr. Shah, learned Advocate for Petitioner has argued that the impugned order is incorrectly passed on a technical plea of applicability of Section 142 of the NI Act. Notwithstanding the fact that grievance of the Petitioner – Complainant was about dishonour of cheques and therefore it ought to have been allowed by the learned

Sessions Court.

6. He would vehemently submit that a conjoint reading of Sections 138, 142 and 145 of the NI Act as well as Section 200 of Code Criminal Procedure, 1973 it is open to the Magistrate to issue process on the basis of the contents of the complaint and the documents in support thereof. He would submit that once the Constituted Attorney files application under Section 145 of NI Act in a cheque dishonor case it would be a matter of discretion of the Magistrate to issue process by relying upon the Affidavit of the Constituted Attorney and examination of the Complainant stands dispense with.

7. He would refer to and rely upon the decision of the Supreme Court in the case of *A.C Narayanan vs State of Maharashtra and Anr.*¹ reported in 2014 in support of his above submissions. While drawing my attention to paragraph No.43 of the decision he would contend that filing of Complaint by a Constituted Power Of Attorney under Section 138 of NI Act is perfectly legal it is permissible and for issuance of process.

8. Hence, he would submit that the order of learned Sessions Judge be set aside and the order of the learned Magistrate passed below the Exhibit-21 be restored along with the original complaint. I have heard the learned Advocate for Petitioner and Respondent.

9. It is *prima facie* seen that Complainant is a private person

¹ (2014) 11 Supreme Court Cases 790

and not a juristic person. My attention is drawn to Section 142A of NI Act which read thus:-

(1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or direction of any court, all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times.

(2)Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1) and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3)If, on the date of the commencement of the Negotiable Instruments (Amendment) Act, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, before which the first case was filed and is pending, as if that sub-section had been in force at all material times.

10. The learned Sessions Judge has in view of the aforementioned specific provision set aside the order of the issuance of process by Magistrate. There is a stark difference between an individual and a juristic person. There are divergent views of the High Court on authority of a Power of Attorney holder appearing, pleading and acting on behalf of the original party. There is no doubt that a juristic person needs to be represented by its authorised representative, for example, in the case of a Company. However question before Court is whether in a criminal case can a Constituted Power of Attorney of holder appear for and on behalf of the Complainant and depose in the

witness box on behalf of the original Complainant as a witness on behalf of the original Complainant about facts which are to the exclusive knowledge of the original Complainant.

11. A complaint is filed under Section 138 of NI Act has to be presented before the Court by the payee and holder of the cheque himself. In such a case the payee and holder of the cheque must examine himself in support of his Petition. What Section 142 of NI Act provides is for only 2 categories of persons for the purpose of Court to take cognizance for offence punishable under Section 138 of NI Act. Question that would arise is whether the Power of Attorney holder in a Section 138 case can depose before the Magistrate for the cognizance to be taken in view of issue of he having personal knowledge about the facts of the case which the original Complainant is required to depose. Plain reading of Section 142A of NI Act would show that Power of Attorney holder is not competent to depose upon the transaction that took place between payee and drawer of cheque and therefore the learned Sessions Judge has correctly opined in paragraph Nos.8 and 9 about the applicability of Section 142A of NI Act by correctly interpreting the same. Paragraph Nos.8 and 9 are reproduced below for reference:-

"8. I have carefully considered the contentions canvassed by both the sides. I have also carefully gone through the ratio of both the rulings (cited supra). I find that the Judgment delivered by the Andhra Pradesh high Court is that of Division bench, whereas, the Judgment delivered by Karnataka High Court is of Single Bench. Moreover, no ruling from our High Court is brought to my notice

on this point.

9. In the instant case, I find that admittedly the complainant is a private person and is not a company which is a juristic person. It is well settled that in case of company which is a Juristic personality, the complaint can be filed for and on behalf of company by some natural person who represents the company. However when complainant himself is a natural person, then as per the provisions of Section 142(a) of Negotiable Instruments Act, no court shall take cognizance of any complaint u/s 138 of Negotiable Instruments Act, except upon a complaint in writing made by the payee or holder in due course. In view of specific provision of section 142 of Negotiable Instruments Act, I find that the learned Magistrate ought to have allowed the application and ought to have dismissed the complaint."

12. I find no reason to interfere with the order dated 28.08.2003 as the same has been correctly passed in the facts and circumstances of the present case. I concur and agree with the said reasons returned in the order dated 28.08.2003 and the said order is upheld and confirmed.

13. Resultantly, the Writ Petition fails. I am informed by the parties that civil proceeding qua the aforesaid *lis* between the parties is still pending before the Civil Court. Those proceedings will undoubtedly determine the substantive right of the parties otherwise with regard to their dispute.

14. In view of the above observations and findings Writ Petition is dismissed.

15. Both Criminal Application No.568 of 2018 and Criminal Application No. 569 of 2018 are also accordingly disposed.

[MILIND N. JADHAV, J.]