

AFR



2026:CGHC:5631

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 84 of 2019

Judgment reserved on 19. 01. 2026

Judgment delivered on 02.02.2026

Smt. Monalisa Agrawal W/o Shri Ajay Kumar Agrawal Aged About 41 Years
Proprietor Of M/s Mahalxmi Tractors, R/o Danipara, Raigarh, District Raigarh
Chhattisgarh.

... Appellant (s)

versus

- 1. Devanand Patel S/o Shri Shoukilal Patel Aged About 32 Years Occupation-
Agriculture And Transporting, R/o- Village- Armuda, P.O.- Mahloi, Tahsil
Pussour, District- Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
- 2. State Of Chhattisgarh Through District Magistrate- Raigarh, District-
Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh

... Respondent(s)

For Petitioner(s)	:	Mr. Ayush Lal, Advocate
For Respondent(s)	:	Mr. Arvind Shrivastava, Advocate
For Respondent(s)		Mr. Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Judgment

- 1. This acquittal appeal has been filed under Section 378 (4) of the Code of
Criminal Procedure, 1973 against the order dated 30.07.2018 in Criminal
Appeal No. 54 of 2018 and in Criminal Appeal No. 72 of 2018 passed by

5th Additional Session Judge, Raigarh by which the learned 5th Additional Sessions Judge has set aside the judgment passed by Judicial Magistrate First Class, Raigarh in Criminal Appeal No. 891 of 2012 and acquitted the accused/respondent No.1 in CRA No. 54/20128 of the charge under Section 138 of the Negotiable Instrument Act and dismissed the CRA No. 72 of 2018 filed by the complainant.

2. Facts of the case, in brief, are that the complainant is running her business in the name and style of Mahalaxmi Tractors through its power of attorney holder Brij Mohan Agrawal. The complainant filed complaint under Section 138 of the Negotiable Instrument Act (hereinafter referred to the Act) through its power of attorney holder mainly contending that:-

(a) The accused has purchased one tractor along with tractor accessories namely Hydraulic Tractor trolley valued at Rs. 5,95,000/- on 22.05.2008 on credit with an understanding between them that the vehicle will be sold on credit in which the accused will pay 3% monthly interest. It is also case of the complainant that after providing the tractor, the complainant made all necessary efforts to get finance from Chhattisgarh Gramin Bank Branch, Pusour but no finance was provided to the accused, as such the accused gave a cheque bearing cheque No. 416253 of Rs. 10,40,000/- payable at Karnataka Bank, Branch Raigarh on 26.12.2009 on the pretext that some portion of the property of the accused will be sold and the amount will be deposited in the said account, as such there will be no difficulty in honouring of the cheque but the amount was not credited which has dishonoured the cheque.

(b) Thereafter, consent was arrived at between the complainant and the accused on 22.05.2008 that the accused will pay rent @ 15, 000 per month for utilizing the tractor from 22.05.2008 to 21.02.2010, accordingly a cheque of Rs. 4,00,000/- was given on 29.01.2010 payable at Karnataka Bank Raigarh which was dishonoured, therefore, a complaint was lodged before the Judicial Magistrate First Class, Raigarh which is still pending.

(C) Thereafter the accused has returned the tractor along with accessories and Hydrolic Tractor trolley on 28.06.2010 and a registered agreement was executed on 18.07.2011. As per the terms of agreement a cheque of Rs.7,75,000/- being cheque no. 366921 dated 18.07.2011 was given by the accused to the complainant which was payable at Karnataka Bank, Raigarh with an understanding that the cheque will be encashed upto 18.09.2011, failing which the same can be recovered by taking recourse of law.

(d) It is also case of the complainant that the accused has requested the power of attorney holder of complainant that his land has not been sold but he will make the payment upto 11.11.2011 to the tune of Rs. 7,75,000 and remaining amount will be paid by the accused at Raigarh only. Since the amount was not given within the time line given by the accused then the complainant deposited the same which was dishonoured and returned to the complainant vide memo dated 11.11.2011 issued by the bank. Thereafter, a notice was sent on behalf of the complainant on 08.12.2011 to the accused directing to pay the amount with 15 days from the date of

receipt of the notice, but the accused has refused to accept the same which has necessitated the complainant to file the complaint.

3. From the record of the case, it is quite vivid that the complaint was supported by an affidavit of the power of attorney holder as provided under Section 145 of the NI Act wherein it has been specifically mentioned in paragraph 1,2,3 and 11 that he is aware of the facts of the case and hem is running the business on behalf of the complainant, as such he is well acquitted with the facts of the case. Learned trial Court taking cognizance of the said complaint issued summoned to the accused/respondent No.1 and in pursuance of that the accused appeared before the trial Court.
4. The complainant to substantiate his submission has exhibited the documents namely agreement dated 09.08.2016 (Ex.C-1), cheque No. 366921 (Ex.C-2), deposit slip (Ex.C-3), Memorandum of Karnataka Bank (Ex.C-4), Notice (Ex.C-5), postal receipt (Ex.C-6), acknowledgment (Ex.C-7 to Ex.C-9) and copy of power of attorney (Ex.C-10). The accused has exhibited documents namely notice (Ex.D-1) and application submitted by the accused to Superintendent of Police, Raigarh (Ex.D-2 and D-3).
5. The complainant in support of her case has examined power of attorney holder (PW-1) and accused has examined defense witnesses Suresh Kumar Sahu (DW-1) and himself under Section 313 CrPC. The trial Court on the basis of evidence, material on record has convicted the accused for commission of offence under Section 138 of the NIT Act on 27.02.2018 and accordingly it is directed that the accused is liable to pay amount of Rs. 8,50,000/- which includes compensation and if the accused fails to

pay the amount then the accused is liable to undergo additional R.I. for one month. Being aggrieved with this order, the complainant as well as accused have preferred Acquittal Appeal which was registered as Cr. Appeal No. 54/ 2018 and 72 of 2018. Learned 5th Additional Sessions Judge vide impugned order has allowed the appeal filed by the accused being CRA No. 54 of 2018 and dismissed the appeal filed by the complainant bearing CRA No. 72 of 2018.

6. Learned Appellate Court while allowing the appeal of the accused has recorded its finding in paragraph 22 of the judgment that there is no whisper about the fact that power of attorney holder is aware with the transaction relates to the cheque in question between the complainant and the accused. It has also recorded its finding that there is no information or pleading about the transaction arises between the complainant and the accused for which the present cheque has been dishonoured, as such in light of judgment passed by Hon'ble Supreme Court in case of **A.C. Narayan vs. State of Maharashtra 2015 (1) SCC 203**, the entire evidence adduced by the power of attorney holder is not acceptable. The learned Appellate court has also recorded its finding that the complainant has not produced any documentary evidence to establish that the complainant Smt. Monalisa Agrawal is proprietor of the firm and accordingly it has quashed the order of conviction passed by the learned Judicial Magistrate First Class.
7. Learned Appellate Court while dismissing the appeal filed by the complainant has also rejected the application for taking additional

document on record filed by the complainant under Section 391 CrPC by which the complainant intends to place on record the letter regarding dealership of Escort Limited, letter of Commercial Tax-1, Raigarh dated 10.05.2018 and letter issued by the Banks on 10.05.2018 and 09.04.2018 to demonstrate that Smt. Monalisha Agrawal is the proprietor of the firm. The Appellate Court has also assigned the reason to disallow the application that the complainant by way of this application to place additional document on record cannot fillup his lacuna in her case. Being aggrieved with the judgment passed by the Sessions Court, the complainant has preferred this acquittal appeal.

8. Learned counsel for the appellant would submit that the first appellate court has committed material irregularity, illegality by not recording the finding that on the basis of the power of attorney as well as the complaint and affidavit filed under Section 145 of N.I. Act there is clear mention about the fact that power of attorney holder is well aware regarding transaction relating to dishonour of cheque and about transaction taken place between the complainant and the accused as all the facts are within the personal knowledge of power of attorney holder. He would further submit that the complainant through its power of attorney holder is able to prove the ingredients which are required to prove the offence under section 138 of the NI Act and also able to prove that cheque was given towards debt which has been dishonoured. It has also been contended that the complainant before the trial Court has categorically pleaded and proved that the purpose for which the power of attorney has been

executed is also included filing of the criminal case, as such complaint filed under Section 138 of the NI Act is within the competency of the power of attorney holder to file complaint. He would further submit that the accused is unable to rebut the same by cogent material; evidence placed on record and would pray for allowing the appeal.

9. On the other hand learned counsel for the accused/ Respondent would vehemently support the judgment of the appellate court by criticizing the judgment passed by the trial court and would submit that from perusal of the power of attorney and averments of the complaint, it is quite vivid that there is no averment that the facts are within the knowledge of the power of attorney and even the notice given to the counsel for the complainant was not authorized by the power of attorney. He would further submit that the complainant is unable to prove that the cheque was given towards debt or liability, thus the ingredients of Section 138 of the NI Act have not been proved by the complainant as such there is no illegality in allowing the appeal filed by the accused by the learned Sessions Judge. He would further submit that the cheque amount is barred by limitation and is not legally recoverable amount, therefore, the judgment passed by the learned Additional Session Judge is legal, justified and does not warrant interference by this Court. To substantiate his submission he would refer to the judgment of Hon'ble Supreme Court in the case of **A.C. Narayanan vs. State of Maharashtra and another reported in 2014(11) SCC 790** and would pray for dismissal of the appeal.

10. I have heard learned counsel for the parties and perused the record.

11. From the submissions made by the parties, the points emerged for determination of this Court are:-

(I) Whether the averments made in the complaint and in the power of attorney are sufficient to record a finding that the complaint filed through power of attorney holder is maintainable in given facts and circumstance of the Case?

(ii) Whether the complainant is able to prove that the offence under Section 138 of the NI Act is made out against the accused or not?

Discussion and submission on the point No.1 and 2.

12. Since both the points which are required to be determined by this Court are interconnected, therefore, they are heard analogously and decided by this Court.

13. To appreciate the point for determination it is expedient for this Court to extract the relevant portion of power of attorney, complaint and evidence under Section 145 of NI Act of the Power of attorney holder.

14. Relevant portion of power of attorney is as under:-

2. यह कि मेरे आम मुख्तयार मेरे द्वारा किये जा रहे व्यवसाय के सामान्य अनुक्रम में मेरी ओर से समस्त संव्यवहार करेगा।

4. यह कि मेरे आम मुख्तयार को यह पूर्ण अधिकार रहेगा कि मेरे व्यवसाय के सामान्य अनुक्रम में एवं मेरे अचल संपत्ति के संबंध में आवश्यकता पड़ने पर किसी व्यक्ति के विरुद्ध भारतवर्ष में स्थित किसी, भी न्यायालय में मेरी ओर से कोई वाद प्रस्तुत करें, उसमें अधिवक्ता नियुक्त करें आवेदन-पत्र का जवाब देवें दस्तावेज पेश करें, प्राप्त करें, शपथ पत्र देवें, विपक्षी से प्रतिपरीक्षण करें, स्वयं साक्ष्य देवें, अपील, रिवीजन, राजीनामा एवं निष्पादन एवं समस्त सुसंगत कार्यवाही करें, एवं मेरे विरुद्ध प्रस्तुत किसी भी सिविल, राजस्व, दांडिक प्रकरण में किसी भी न्यायालय में मेरी ओर से उपस्थित होकर पैरवी करें एवं इस कंडिका पूर्वोक्त लिखी समस्त कार्यों को करने का पूर्ण अधिकार रहेगा तथा न्यायालय में शासकीय खजाने, अर्धशासकीय कार्यालय, में स्वायन्तशासी में उपरोक्त वर्णित समस्त कार्य करने का पूर्ण अधिकार रहेगा। डिक्ली राशि या अन्य राशि प्राप्त करने का अधिकार रहेगा तथा उसके सम्बन्ध में रसीद जारी करेगा।

15. Relevant portion of complaint is as under:-

परिवादीनी निम्नानुसार परिवाद प्रस्तुत करती है :-

यह कि उभय पक्षों के नाम पता एवं व्यवसाय परिवाद पत्र के शीर्ष में दर्शाये अनुसार है। यह कि परिवादीनी महालक्ष्मी ट्रैक्टरस का व्यवसाय अपने आममुख्तियार बृजमोहन अग्रवाल के द्वारा करती थी। अतः प्रस्तुत परिवाद, परिवादीनी अपने आममुख्तियार बृजमोहन अग्रवाल द्वारा प्रस्तुत करती है।

यह कि अभियुक्त ने परिवादीनी के संस्थान से दिनांक 22.05.2008 को उधारी में ट्रैक्टर, एसेसरीज एवं हाईड्रोलिक ट्रैक्टर ट्राली कीमती 5,95,000.00 रु. (अक्षरांक पांच लाख पनचानबे हजार रु.) में उधारी में क्रय किया था तथा समस्त बकाया राशि एवं उस पर खरीदी दिनांक से भुगतान दिनांक तक 3 प्रतिशत मासिक ठहराव के साथ ब्याज भी अदा करने का मौखिक तथा लिखित आश्वासन अभियुक्त ने परिवादीनी को दिया था तथा इस संबंध में अभियुक्त के द्वारा दिनांक 22.05.2008 को एक सहमति पत्र का भी निष्पादन किया गया था।

यह कि अभियुक्त ने दिनांक 18.09.2011 को परिवादीनी के आममुख्तियार से निवेदन किया था कि अभियुक्त द्वारा बिक्रय की जाने वाली कृषि भूमि अभियुक्त ने आज दिनांक तक बिक्रय नहीं की है इसलिए अभियुक्त परिवादीनी को अनुबंध/सहमति पत्र दिनांक 18.07.2011 के अनुसार समस्त भुगतान दिनांक 11.11.2011 तक निश्चित रूप से कर देंगे जिसके लिए परिवादीनी बैंक से उपरोक्त चैक द्वारा 7,75,000.00 रु का भुगतान प्राप्त कर लेवेगा तथा शेष देय राशि का भुगतान अभियुक्त ने दिनांक 11.11.2011 को रायगढ़ में आकर चैक के द्वारा परिवादीनी को भुगतान कर देंगे।

16. Relevant portion of affidavit of Brijmohan Agrawal recorded under Section 145 of

NI Act is as under:-

शपथ पत्र

मैं बृजमोहन अग्रवाल आ. स्व. कालीचरण अग्रवाल उम्र 61 वर्ष निवासी दानीपारा तह. व जिला रायगढ़ छ.ग. शपथपूर्वक निम्नलिखित कथन करता हूँ:-

1. यह कि परिवादीनी के मुझे अपना पंजीकृत आममुख्तियार नियुक्त किया है मैं परिवादीनी का आममुख्तियार हूँ।

2. यह कि मैं परिवादीनी की ओर से उसके व्यवसायिक संस्थान महालक्ष्मी ट्रैक्टरस का संपूर्ण संचालन एवं सम्यवहार करता था तथा मुझे प्रकरण से संबंधित समस्त जानकारी है।

3. यह कि अभियुक्त ने परिवादीनी के साथ एक अनुबंध/सहमति पत्र दिनांक 18.07.2011 को निष्पादन कर उसका विधिवत उप पंजीयक रायगढ़ के कार्यालय में पंजीयन करवाया था। जिसमें गवाह नंबर 2 पर मेरे हस्ताक्षर हैं तथा इस अनुबंध/सहमति पत्र के संबंध में भी मुझे समस्त जानकारी है।

11. यह कि अभियुक्त ने दिनांक 18.09.2011 को मुझसे निवेदन किया था कि अभियुक्त द्वारा बिक्रय की जाने वाली कृषि भूमि अभियुक्त ने आज दिनांक तक

विक्रय नहीं की है इसलिए अभियुक्त परिवादीनी को अनुबंध/सहमति पत्र दिनांक 18.07.2011 के अनुसार समस्त दिनांक 11.11.2011 तक निश्चित रूप से कर देंगे जिसके लिए परिवादीनी बैंक के उपरोक्त चेक द्वारा 7,75,000.00 रु. का भुगतान प्राप्त कर लेवेगा तथा शेष देय राशि का भुगतान अभियुक्त ने दिनांक 11.11.2011 को रायगढ़ में आकर चेक के द्वारा परिवादीनी को भुगतान करने का मौखिक आश्वासन दिया था।

17. From perusal of the power of attorney, complaint and affidavit filed under Section 145 of the N.I. Act, it is quite vivid that the power of attorney holder is competent to file complaint, he is well aware about the transaction relates to execution of agreement, cheque issued by the accused in favour of the complainant and also that he is well aware with not only this transaction but entire business is run and managed by him only on the strength of power of attorney of the complainant. Thus, it is quite vivid, that the Appellate Court has not considered this vital aspect of the matter while acquitting the accused.
18. With regard to the power of attorney, it is quite clear that power of attorney holder is agent of the grantor and when the grantor authorises the attorney holder to initiate legal proceedings and the attorney holder initiates such legal proceedings, he does so as the agent of the grantor. It is equally well settled legal position that by initiation of the proceedings the grantor represent by his power of attorney holder, as such, power of attorney holder cannot file a complaint in his name as if he was the complainant. But for power of attorney he can initiate criminal proceedings on behalf of the principal.
19. From the scheme of Negotiable Instrument Act, 1881 the complaint under Section 138 of the NI Act is filed for dishonor of cheque for insufficiency etc of funds in the account and Section 142 of the Act provides

cognizance of the offence under the Act. Section 145 of the Act provides how evidence on affidavit can be given in the enquiry, trial or other proceedings under the NI Act. Thus, From a conjoint reading of Sections 138, 142 and 145 of the N.I. 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.

20. 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.

21. From the above discussions, it is quite vivid that 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. 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. 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, as such filing of complaint under Section 138 of the NI Act through power of attorney is perfectly legal and competent. If the contingencies as discussed above are available on record.
22. Filing of the complaint under Section 138 of the NI Act through power of attorney holder is maintainable or not and what are the parameters

required to maintain the complaint through power of attorney has recently come up for consideration before the Hon'ble Supreme Court in the case (reported in **2025 Online SCC SC 18**) in the case of **Naresh Potteries vs. Aarti Industries and another** wherein the Hon'ble Supreme Court has held as under:-

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.

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.

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 26 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.

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 incharge of the day-to-day affairs of the appellant-firm and as such had personal knowledge of the facts of the matter.

23. In light of the above legal position, averments made in the complaint, affidavit under Section 145 of the CrPC and power of attorney it is quite vivid that the complainant in clear terms has mentioned that the power of attorney holder is well acquaintance with the transaction of dishonour of cheque in question and also that complainant is running her business in the name of Maha Laxmi Tractors through power of attorney holder Brij Mohan Agrawal and the accused has not diluted this fact despite extensive cross examination. The witness Brij Mohan Agrawal in paragraph -32 has categorically stated that he is the power of attorney holder of Monalisa Agrawal, therefore, the finding recorded by the learned Additional Session Judge that the evidence of power of attorney holder and the documents produced by him are not acceptable, suffers from perversity or illegality and deserves to be quashed by this Court. Accordingly, it is set aside.

24. The finding of learned First Appellate Court that no rent for use of vehicle of the owner can be recovered, as such the rent which has been used in the cheque amount is contrary to the agreement and also shown arbitrariness this finding is beyond the preview of Negotiable Instrument Act as for attracting the provision of NI Act the Court has to see whether the cheque was given towards any debt or liability or before filing compliant proper notice has been given or not. Thus, this finding is illegal, suffers from perversity and is liable to be set aside and accordingly it is set aside.
25. Similarly, the finding of learned Additional Sessions Judge in paragraph-28 that the complainant is unable to prove ingredients of section 138 of the N.I Act is illegal as the complainant through her evidence has categorically brought on record that in view of the agreement dated 18.07.2011 (Ex.P-1C) a cheque of Rs. 7,75,000/- was given by the accused to the complainant wherein he has admitted his liability and notice (Ex. C-5) was issued by the counsel for the complainant which has been returned with an endorsement refuse to accept, as such the notice will be deemed to have been served upon the accused as per the provisions of Section 27 of the General Clauses Act which provides presumption of service of post if the document is sent via properly addressed, prepaid, registered post it will be deemed to have been served at the time of expected deliver unless the recipient proves otherwise. In the present case, the accused has not rebutted the same. Thus all the ingredients have been proved by the complainant before the trial Court. The learned Judicial Magistrate First

Class after taking into consideration entire facts of the case has passed the impugned order which cannot be altered by the learned Additional Sessions Judge, therefore, the impugned order passed by the learned Additional Sessions Judge, Raigarh is set aside and the order of learned Judicial Magistrate First Class, Raigarh is affirmed.

26. Accordingly the point's No. 1 and 2 determined by this Court are answered in favour of the complainant and against the accused. Consequently the Acquittal appeal filed by the complainant is allowed in part by modifying the jail sentence awarded to the accused and enhancing the compensation by learned Judicial Magistrate Class, Raigarh dated 27.03.2018 passed in complaint case No. 891 of 2012. The accused is directed to pay Rs. 8,75,000/- including cheque amount Rs. 7,75,000 with compensation as directed by the trial Court within two months from the date of receipt of the copy of the order, failing which the accused shall liable to undergo SI for one month.

Sd/-

(Narendra Kumar Vyas)
Judge

Head Note

A complaint under Section 138 of the Negotiable Instrument Act can be filed through power of attorney holder, if averments regarding awareness about the transaction relates to dishonour of the cheque is available on record.

मुख्य टिप्पणी

यदि परिवाद अंतर्गत धारा 138 परक्राम्य लिखत अधिनियम, 1881 के तहत प्रस्तुत की जा सकती है यदि आममुख्यतयारनामा को चेक के अनादरित होने का तथ्य एवं समव्वहार के सम्बन्ध में जानकारी हो।