

(2012) 09 BOM CK 0111
In the Bombay High Court
Case No : Criminal Appeal No. 126 of 2003

Jyoti Sahajwani

APPELLANT

Vs

Shri Sadhu Manjani

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 32, 33, 34, 89
Negotiable Instruments Act, 1881 (NI) — Section 118, 118(a), 138, 139, 142
Penal Code, 1860 (IPC) — Section 89
Registration Act, 1908 — Section 33

Citation : (2012) BomCR(Cri) 832

Hon'ble Judges : A.R. Joshi, J

Bench : Single Bench

Advocate : Nitin Lalwani, holding for Mr. Shyam Dewani, for the Appellant; A. Sambhare, h/f Shri A.G. Gharote, for R - 1 and Shri P.V. Bhoyar, APP for R - 2, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Joshi, J.—Heard rival arguments on this criminal appeal for final hearing. Perused the record and proceedings and also synopsis of arguments, advanced by the rival parties. This criminal appeal is preferred by the appellant/original complainant, challenging the judgment and order of acquittal, passed in Case No. 630/1999 by the Judicial Magistrate First Class, 7th Court, Nagpur.

2. By the impugned judgment and order, dated 2.1.2003, the complaint filed by the present appellant was dismissed and present respondent no. 1/original accused was acquitted of the offence punishable u/s 138 of the Negotiable Instruments Act.

3. In order to appreciate the rival submissions in the present appeal and scope of the interference in the judgment of acquittal, certain factual position and also case of complainant can be briefly stated as under.

4. During the relevant time of the year 1996 or there about, the power of attorney of complainant firm was engaged in the business of sale and purchase of the shares, securities under the name and style of M/s Saibaba Investments of which the proprietor was in fact his wife. However, he himself was actively doing the said business. There were various transactions of sale and purchase of shares and debentures so also of securities entered into between M/s Saibaba Investments and the present respondent no. 1. Such transactions were sometime from February 1995 till March, 1996 and as on 31.3.1996 there was outstanding amount of Rs. 4,46,595/- in the statement of accounts, maintained by the complainant. According to the complainant, there was mutual agreement between the complainant and the present respondent no. 1, then accused as to how the said outstanding amount is to be paid to the complainant. As per such alleged arrangement, the cheque for Rs. 1,46,595/- was given in favour of the complainant. It was bearing No. 095789 dated 5.4.1996. So far as balance amount was concerned, it was allegedly agreed that the respondent no. 1 should sale his house to the complainant for total consideration of Rs. 3,20,000/- and out of the said amount, Rs. 3,00,000/- were to be adjusted from the outstanding amount under share and debenture transactions. The balance amount of Rs. 20,000/- was to be paid by the complainant to the accused on 30.6.1996.

5. In view of the above alleged arrangement according to the complainant, the present respondent no. 1 executed an agreement to sale on 31.3.1996 and also signed one acknowledgment, both documents on stamp papers. Also on 31.3.1996, accused gave the above referred cheque to the complainant with putting the date 5.4.1996.

6. The cheque was presented to the banker of the complainant, however, it was dishonoured and returned unpaid with endorsement "payment stopped by the drawer". Demand notice was issued of payment of Rs. 1,46,595/-. The present respondent/accused did not make the payment and replied the said notice, denying transactions and denying execution of the acknowledgment and giving of the cheque for Rs. 1,46,595/-. However, the present respondent/accused admitted his signature on the cheque and in fact two signatures made on the cheque and further raised a plea that he has lost the said cheque much prior on 15.1.1996 and accordingly intimated the Bank on that day itself with instruction to stop payment on the said lost cheque.

7. As there was no payment for the dishonoured cheque, the complaint was lodged and it was finally heard and ended in acquittal and said acquittal is challenged in the present appeal.

8. At the threshold it must be mentioned that the trial Court though dismissed the complaint, it had taken a specific view, so far as the giving of the cheque to the complainant and liability of the present respondent/accused for payment towards dishonour of the said cheque, in the affirmative. The only point on which the entire complaint was dismissed was held as non-maintainability of the complaint as filed by the Power of Attorney Holder Shri Rajkumar Sahajwani for

want of authorization from the sole proprietor of Saibaba Investments i.e. payee of the cheque. The wife of said Rajkumar Sahajwani, one Smt. Jyoti Sahajwani is the proprietor of said firm M/s Saibaba Investments during the period of the said transaction.

9. During the arguments, Learned Counsel for the respondent/accused vehemently assailed the said affirmative finding as to liability of the accused to pay for the said dishonoured cheque. The points formulated by the trial Court and answers thereon are reproduced hereunder.

Points

Findings

1.

Does complainant prove that, on

5/4/96 accused/non-applicant

issued one cheque bearing no.095789

dated 5/4/96 for amount of

Rs.1,46,595/- drawn on State of

Bank of India, Panchpaoli, Nagpur

which was dishonoured and was

returned with an endorsement,

_ Payment stopped by the drawer_ ?.

.. .In the

affirmative

2.

Whether complaint is maintainable ?

...No.

3.

What order ?

...Complaint is

Dismissed.

10. From the above, it is apparent that the trial Court had held that on 5.4.1996, the accused issued concerned cheque in favour of the complainant/firm and it was dishonoured as the payment was stopped by the drawer. According to the Learned Counsel for the respondent/accused, this is erroneous finding and for

which he had preferred a separate petition before this Court, challenging the correctness of the said finding. However, another Bench of this Court gave directions that the respondent can agitate that issue in the present criminal appeal, preferred by the original complainant and as such on such understanding the respondent/accused withdrew the said petition separately filed and during the arguments in the present matter raised the said issue, challenging the validity of the said finding on point no. 1 as mentioned above.

11. In view of above, in the present matter, it is to be ascertained whether any interference in the impugned judgment is warranted and whether the affirmative answer to point no. 1 as framed by the trial Court, is required to be altered, thus, consequently, rendering the final effect of the impugned judgment and order same as dismissal of complaint but on different count as to non-establishment of legally enforceable debt and therefore not attracting the requirements of Section 138 of the Negotiable Instruments Act.

12. As such the arguments on said first point are taken for scrutiny vis-a-vis substantive evidence brought on record through all the four witnesses examined for and on behalf of the complainant. The second point regarding maintainability of the complaint, which is answered in the negative, rendering dismissal of the complaint, is in fact the decision in favour of the respondent and if on merits answer to point no. 1 as formulated by the trial Court is in the negative, there is nothing much to be discussed regarding the second point. However, the said aspect shall also be dealt with hereunder at the appropriate place.

13. The defence of respondent/accused is that the cheque in question was lost by him on 15.1.1996 and immediately on the next day he instructed his Banker to stop the payment and as such accordingly a note was taken in the Bank concerning the account of the respondent. In view of such defence, it is further the case of respondent/accused that he never issued the said cheque in favour of the complainant/firm and as such it has been misused by the complainant, taking advantage of the family relations between the parties. According to the respondent, complainant Rajkumar Sahajwani is the friend of his younger brother and as such was well acquainted with the respondent and also frequently visiting the working place of the respondent i.e. laundry and also the house of the respondent. According to the respondent and as specifically mentioned in the reply to the demand notice, sent by the complainant, he had lost the said cheque when he had already put his signature on the same for withdrawing the amount for himself from his Bank. According to the respondent, at that time, he had not filled the said cheque with any other details except his two signatures made on it while he was in a hurry to go to Bank. Subsequently, he went to the Bank and searched for the cheque for withdrawal of the amount but not finding it, he withdrew the amount by taking a spare loose cheque from the Bank, where he was in fact, employed and withdrew an amount of Rs. 1,700/-. According to the respondent, entry to that effect in his account has already been produced through P.W. 4 the Banker from the Bank, where the respondent has account. It

is significant to note that said P.W. 4 Yashwant Kahu, the Manager of the said Bank of India was examined by the complainant and he was asked to produce the account statement of the respondent/accused and all this was done at the behest of the complainant. Also according to the respondent, after withdrawal of the amount of Rs. 1,700/- on 15.1.1996 when he came back home in the evening and searched for the cheque, he did not find it and accordingly on the next day i.e. on 16.1.1996, he gave written intimation to his Bank for stopping the payment on account of loss of the said concerned cheque. It is a factual position that it is the same cheque which according to the complainant was given to him on 31.3.1996 with postdated with date 5.4.1996. It is the same cheque having two signatures of the respondent and bearing the same number as 095789.

14. Even the above defence as to loss of cheque on 15.1.1996 and reporting to his Bank on 16.1.1996 giving instructions for stopping payment, was reiterated by the respondent while his statement u/s 313 of the Code of Criminal Procedure was recorded during the trial. Said answer given to the last question no. 29 asked to the respondent/accused is significant enough and should have been considered by the trial Court and should have been evaluated on preponderance of probability, mainly in view of the corroborating documentary evidence from the account statement of the respondent/accused produced on behalf of the complainant through the Banker of the State Bank of India, where the account of the respondent/accused was maintained. For the sake of ready reference, the said entire answer is reproduced hereunder for proper appreciation of the defence of the respondent/accused.

Question No. 29 : Do you want to state anything more about the case ?

Answer : The complainant is my younger brother's friend. Hence, he is on visiting terms to our house. Similarly the complainant comes to our laundry. Similarly he is on visiting terms to our house. On 15th January 96, I was in hurry to go to the Bank and since I was in need of money, I put two signatures on one cheque in a hurry. At the same time, the complainant came to our house. I told him that I want to go the Bank and started for going to the Bank. The complainant also alongwith me started going out. On reaching the Bank, I searched for the cheque signed by me, but I didn't find it. Thereafter, I requested my Saheb and took one loose cheque and withdrew Rs. 1700/- from the Bank. On returning home, I enquired the members of my house regarding the cheque, but they denied to have found that cheque. Next day on 16th, I went to the Bank and applied for stopping payment and informed the Bank about missing of cheque. On 22nd December, 95, I asked the complainant to bring stamp paper of Rs. 20/- and another stamp paper of Rs. 50/-. The complainant brought the same. Those stamp papers were needed by me for loan purpose etc. Hence I put my signature on both the stamp papers and gave them to my son and asked him to bring them to the Bank after getting them typed. But my son didn't bring those stamp papers to the Bank. Thereafter on not finding those

stamp papers in the house, I have given public notice in Lokmat Samachar news paper on 3/4/96. I have lodged report at Police Station Jaripatka in respect of missing of the said stamp papers.

15. On the other aspect as to legally enforceable debt, it is the submission on behalf of the respondent/accused that there was no acknowledgment of indebtedness of Rs. 1,46,595/- i.e. apparently the cheque amount inasmuch as the acknowledgment Exh. 74 brought on record by the complainant and regarding which P.W. 2, witness of the complainant has deposed, is in fact the document fabricated by the complainant. To substantiate this argument, it is brought to the notice of this Court that the stamp paper of Rs. 20/- on which the said acknowledgment is printed is purchased by Shri Rajkumar Sahajwani but shown as purchased for and on behalf of the respondent/accused. The stamp paper is dated 22.12.1995. However, the alleged writing is showing the date as 31.3.1996. It is further brought to the notice of this Court that the said alleged acknowledgment speaks of the respondent/accused acknowledging his liability to pay total sum of Rs. 4,46,595/- to the complainant on account of sale and purchase of shares and other securities effected till date and that accused was paying sum of Rs. 1,46,595/- by way of cheque No. 095789, dated 5.4.1996 and the balance amount of Rs. 3,00,000/- would be adjusted against the consideration payable to the complainant Rajkumar Sahajwani towards sale of the house of the accused to him. This alleged acknowledgment further states that accused had executed separate agreement. By pointing out these contents of the acknowledgment, it is submitted that the said contents are in variance with the case of the complainant so also in variance with the statement of P.W. 2, the witness of the complainant. It is further brought to the notice of this Court that apart from the said alleged acknowledgment, no other document much less any agreement was produced before the Court. This failure on the part of the complainant is significant when according to the complainant separate agreement was entered into between the parties for sale of the house of the accused to the complainant.

16. It is also brought to the notice of this Court by pointing out the substantive evidence of P.W. 2 that according to him the cheque which was given by the accused to the complainant was approximately for Rs. 1,50,000/- and that time accused entered into the agreement of sale of house with the complainant and this happened in presence of P.W. 2. Significantly enough the date of such giving of the cheque is not mentioned by P.W. 2. Moreover, his substantive evidence further mentions that the said agreement was for Rs. 3,20,000/-, out of which the complainant and accused adjusted Rs. 3,00,000/- and remaining amount of Rs. 20,000/- was to be paid at the time of possession of the house. According to P.W. 2, the said agreement was already written but was signed by both the parties in his presence. Said P.W. 2 further states before the Court that there were two stamp papers and out of them one was used for settlement of account and other was used for agreement to sale. In spite of such evidence he only identified his signature on Exh. 74 and according to him it was signed on

31.3.1996.

17. During the cross-examination on the above aspect as to the presence or otherwise of the stamp paper agreement and the acknowledgment also on stamp paper, P.W. 2 had specifically answered in his substantive evidence, which appears at page no. 76 of the paper book, to the following effect.

I did not read myself of both stamp papers and therefore I do not know the contents therein.

Also during his cross-examination he accepted that he was not knowing who brought the stamp papers and also the date on the stamp papers. During the cross-examination the case of the accused was put to this witness regarding missing of the cheque in January, 1996 and also lost of the stamp papers and regarding public notice given in the newspaper, dated 3.4.1996 about missing of the stamp papers and "No Objection Certificate" from Jaripatka Cooperative Housing Society, where the flat of the accused situated.

18. By pointing out the substantive evidence of P.W. 2 as mentioned above it is the submission on behalf of the respondent/accused that there is failure on the part of the complainant to establish the legally enforceable liability of the accused for paying certain amount to the complainant which is the cheque amount. Again on this aspect attention of this Court is drawn towards the alleged account book produced by the complainant vide Exh. 56. This is in fact notebook having handwritten serial numbers not for all pages but only up to the page no. 53 and showing the writing of the accounts allegedly for the share and debenture transactions of different clients of the complainant including the accounts written for the present respondent/accused. On careful examination of the said account book and specifically Exh. 56 i.e. page nos. 8 to 11, it is apparent that all the entries therein which are from 1.2.1995 till 18.3.1996 were written in one stroke by one pen and with the same style of handwriting and by same writer. On admissibility or otherwise of the said contents of the account book it is submitted on behalf of the respondent/accused that there cannot be any evidentiary value to the contents of the account book to come to the conclusion that the concerned cheque was given by the accused to the complainant towards legally enforceable liability. It is also submitted that the said account book has not been proved as per the Evidence Act. In this connection, according to Section 34 of the Indian Evidence Act, 1872 the entries made in the regular course of business can be taken into account but such statement was not alone be sufficient evidence to charge any person with liability, further argued on behalf of the respondent/accused. To substantiate this submission, shelter of the ratio propounded by the following authorities was taken.

(A) Chandradhar Goswami and Others Vs. The Gauhati Bank Ltd., .

(B) Zenna Sorabji and Others Vs. Mirabelle Hotel Co. (Pvt.) Ltd. and Others, .

(C) Mettur Beardsell Limited Vs. M/s. Salem Textiles Limited and 2 others, .

19. Again on the requirement for maintaining the accounts in the prescribed format as per the regulations of SEBI, it is brought to the notice of this Court that according to own admission given by complainant/P.W. 1 though the firm was allegedly working as sub-broker, there was no procedure followed as prescribed by SEBI as required to be followed by sub-broker. It is further submitted that there was no registration done by the complainant/firm with SEBI though it is contemplated by Rule 3 of the Securities And Exchange Board Of India (Stock Brokers and Sub-Brokers) Rules and Regulations, 1992. Attention of this Court was drawn towards the booklet titled Securities And Exchange Board Of India (Stock Brokers and Sub-Brokers) Rules and Regulations, 1992. Rule 3 reads as under :

Rule 3. No stock-broker or sub-broker shall buy, sell, deal in securities, unless he holds a certificate granted by the Board under the regulations.

Provided that such person may continue to buy, sell or deal in securities if he has made an application for such registration till the disposal of such application.

20. Rule 5 (1) is concerning grant of certificate to sub-broker, which reads as under :

5. (1) The Board may grant a certificate to a sub-broker subject to the following conditions, namely:

(a) he shall pay the fees in the manner provided in the regulations;

(b) he shall take adequate steps for redressal of grievances of the investors within one month of the date of the receipt of the complaint and keep the Board informed about the number, nature and other particulars of the complaints received; and

(c) in case of any change in the status and constitution, the sub-broker shall obtain prior permission of the Board to continue to buy, sell or deal in securities in any stock exchange;

(d) he is authorised in writing by a stock-broker being a member of a stock exchange for affiliating himself in buying, selling or dealing in securities:

Provided such stock-broker is entitled to buy, sell or deal in securities.

21. Attention of this Court is also drawn towards Regulation 15 of the Code Of Conduct For Sub-Brokers which deals with the integrity, exercise of due skill and care being the general duties and specifically duties to the investors as to execution of the orders faithfully for buying and selling of securities, issue of purchase or sale notes to the clients, not to commit breach of Trust regarding details of personal investments of the client, fairness to the clients, investment advice and lastly competence of sub-broker and requiring adequate trained staff and arrangements to render fair, prompt and competent services to the clients.

22. By pointing out these Regulations, which are admittedly not complied at any

time by the complainant, it is submitted by the respondent/accused that the complainant has failed to establish the legally enforceable liability of the respondent/accused with respect to the said cheque.

23. Regarding presumption u/s 118 and 139 of the Negotiable Instruments Act, much is argued by the Learned Counsel for the appellant/complainant that the necessary facts required to prove and required to raise the presumption under said Sections in favour of the complainant have already been proved by examination of P.W. 1 and P.W. 2 as to giving of the cheque by the accused and signing the same in presence of P.W. 2. In that event, the burden was on the accused to rebut the said presumption by leading the cogent evidence, further argued. It is further submitted that accused had failed to rebut the said presumption as he did not enter into the witness box so also he did not examine any defence witnesses.

24. On the aspect of stop payment letter given by the accused to his own Bank on 16.1.1996 (Exh. 98), it is argued that such letter was not proved by the accused, moreover, he was working in the same Branch and as such there was every chance for him to fabricate the evidence and to give any such alleged letter subsequently and to create evidence that stop payment instructions were much earlier given in January 1996. It must be said that this argument on behalf of the complainant assumes so many things and accepting various contingencies without there being any material brought on record by the complainant. Further while arguing on this aspect it must be said that the complainant has lost sight of the fact that he himself had examined P.W. 4, the Officer from the Bank of the accused and through the said witness, he had brought the said stop payment letter on record, which is Exh. 98. Now, it cannot lie in the mouth of the complainant to say that the said letter giving instructions to the Bank for stop payment has not been proved by the accused and hence, this argument cannot sustain under the facts of the present case. More so, when the alleged acknowledgment, dated 31.3.1996 (Exh. 74) cannot be taken as trustworthy and more so cannot fasten the liability for legally enforceable debt on the accused for the discussion mentioned in the earlier paragraphs.

25. The reliance placed on behalf of the appellant on the authority Goa Plast (P) Ltd. Vs. Chico Ursula D'Souza, is misplaced in view of the distinguishable facts.

26. So far as rebuttal of the presumption envisaged by Section 118 and 139 of the Negotiable Instruments Act, it is argued on behalf of the respondent/accused that though it is accepted that foundation has been laid by the complainant to attract the presumption under said section then also the case of the complainant is defeated by his intrinsic evidence and for that purposes, it was not necessary for the accused to enter into defence. By this argument, the Learned Counsel for the respondent preferred to the evidence of P.W. 2 and also P.W. 4 own witnesses of the complainant. On this aspect reliance is placed on behalf of the respondent/accused on the authority, 2004 (5) CRJ 711 Bombay High Court (Girish Kantappa Shetty...Versus...State of Maharashtra).

27. The ratio of the said authority speaks that material brought out in the cross-examination was sufficient to rebut the presumption u/s 118 and 139 of the Negotiable Instruments Act and charge u/s 138 of the Negotiable Instruments Act fails. On the similar issue, reference was made to another citation K. Prakashan Vs. P.K. Surenderan, .

28. While dealing with this issue of presumption, the Hon''ble Apex Court in the above decision had mentioned the observations in another matter in Kamala S. Vs. Vidyadharan M.J. and Another, , wherein it was held :

The Act contains provisions raising presumption as regards the negotiable instruments u/s 118 (a) of the Act as also u/s 139 thereof. The said presumptions are rebuttable ones. Whether presumption stood rebutted or not would depend upon the facts and circumstances of each case.

29. In K. Prakashan...Versus...P.K. Surenderan (Supra) again the Hon''ble Apex Court referred to the observations mentioned in another matter in M.S. Narayana Menon @ Mani Vs. State of Kerala and Another, , wherein it was held :

30. Applying the said definitions of "proved" or disproved" to the principle behind section 118 (a) of the Act, the court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon.

30. Again shelter is taken of the ratio propounded by the above referred authority in K. Prakashan...Versus...P.K. Surenderan (Supra) for canvassing the proposition that standard of proof so far as the prosecution is concerned is proof of guilt beyond all reasonable doubt; the one on the accused is only mere preponderance of probability. These observations of the Hon''ble Apex Court were in respect to the presumption u/s 118 (a) and 139 of the Negotiable Instruments Act, regarding establishment of the case u/s 138 of the Negotiable Instruments Act.

31. In view of the above, it must be said that the trial Court had erred in answering point no. 1 referred above, in the affirmative and considering the standard of proof required to establish the defence of the accused and considering the evidentiary value of the evidence of P.W. 1, P.W. 2 and P.W. 4 and the effect of documentary evidence produced on behalf of the complainant himself, the said point is answered in the negative. In view of this, the final result of the matter is same that of the dismissal of the complaint and thus maintaining the final order of acquittal of the accused but on different reasoning.

32. In view of the above finding of this Court, in fact, there is nothing to again

discuss the issue of authority or otherwise vested with the complainant in lodging the complaint u/s 138 of the Negotiable Instruments Act for and on behalf of M/s Saibaba Investments, of which his wife Jyoti is the sole proprietor. On this aspect of complaint lodged by Power of Attorney Holder and he himself stepped into the witness box and gave evidence, main objection was raised before the trial Court on behalf of the accused contending that the Power of Attorney was not executed as per Section 89 of the Indian Evidence Act, 1872 and Section 33 of the Registration Act, 1908. On such objection, now, it is argued on behalf of the complainant that Section 89 of the Indian Evidence Act raises a presumption about the authenticity if the Power of Attorney is notarized. However, in absence of which the same does not cease to be the document, only the presumption could not be raised as to its authenticity. Like any other document the Power of Attorney could be proved, further argued. It is further submitted on behalf of the complainant that so far as Section 33 of the Registration Act, 1908 is concerned, the same has no application in the present case as notarization is required only for the purpose of Section 32 of the Registration Act i.e. when the Power of Attorney is required to be presented before the Registrar for executing any document.

33. Apart from the above, it is further submitted on behalf of the complainant that in view of the ratio propounded by the following authorities, it was not necessary to examine the complainant as the entire transaction was carried out by the Power of Attorney Holder for and on behalf of his wife i.e. to the exclusion of the proprietor of M/s Saibaba Investments. The said authorities are,

(a) Mamatadevi Prafullakumar Bhansali Vs. Pushpadevi Kailashkumar Agrawal and Another, .

(b) AIR 2009 SC 422 (M/s. Shankar Finance & Investments...Versus... State of Andhra Pradesh & ors.).

34. In the case of Mamatadevi Prafullakumar Bhansali Vs. Pushpadevi Kailashkumar Agrawal and Another, , this Court in paragraph no. 21 held as under :

21. The Negotiable Instrument Act is of 1881 and before it came into existence the law governed Powers of Attorney Act namely 39 of Act of 28 of 1866 existed. By the Powers of Attorney Act of 1882, the law as it existed related to execution of power of attorney and conferring of authority came into existence, deals with an instrument titled as power of attorney which is defined as follows :-

1-A. Definition.- In this Act, power-of-attorney includes any instrument empowering a specified person to act for and in the name of the person executing it.

2. Execution under power-of-attorney The donee of a power-of-attorney may, if he thinks fit, execute or do any instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of

the donor of the power; and every instrument and thing so executed or done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.

Thus the concept of power of attorney did exist which fortifies due authorization as contemplated by the agency as provided for in section 27 of N.I. Act. As is already held by this Court by his Lordship Justice R.K. Batta in *Pradeep Mohanbhai (Dr.) vs. Minguel Carlos Dias (Mr.)* (supra) and as similar view is taken by various other High Courts, this Court holds that filing of a complaint by a power of attorney is not just permissible but is competent.

Thus, the power of attorney holder who is duly and properly authorised to do so can file complaint u/s 142 of N.I. Act towards dishonour of cheque for offence u/s 138 thereof in the name of the principal for signing for and on behalf of the principal.

35. In the case of *M/s. Shankar Finance & Investments v. State of Andhra Pradesh & ors.*, reported in AIR 2009 SC 422, the Hon'ble Supreme Court in paragraph no. 7 held as under :

7. The payee of the cheque is M/s. Shankar Finance & Investments. The complaint is filed by M/s. Shankar Finance & Investments, a proprietary concern of Sri Atmakuri Sankara Rao, represented by its Power of Attorney Holder Sri Thamada Satyanarayana. It is therefore evident that the complaint is in the name of and on behalf of the payee. Section 142 (a) of the Act requires that no Court shall take cognizance of any offence punishable u/s 138 except upon a complaint made in writing by the payee. Thus the two requirements are that (a) the complaint should be made in writing (in contradistinction from an oral complaint); and (b) the complainant should be the payee (or the holder in due course, where the payee has endorsed the cheque in favour of someone else). The payee, as noticed above, is M/s. Shankar Finance & Investments. Once the complaint is in the name of the "payee" and is in writing, the requirements of section 142 are fulfilled. Who should represent the payee where the payee is a company, or how the payee should be represented where payee is a sole proprietary concern, is not a matter that is governed by section 142, but by the general law.

Considering the above arguments and the ratios propounded in the cited authorities, still it must be said that the copy of power of attorney produced by complainant without there being any other material, much less examination of proprietor of M/s Saibaba Investments, the view taken by the trial Court on this aspect need not be discussed. Suffice it so say that on the merits there was no case for the complainant and as such there is nothing to alter the final order of acquittal and in the result, the present appeal must fail and the same is accordingly dismissed.