

---

**(2000) 03 AP CK 0006**

**In the Andhra Pradesh High Court**

**Case No : Criminal Petition No. 1180 of 2000**

Recon Agrotech Ltd.

APPELLANT

Vs

Vijaya Sales Corpn.

RESPONDENT

---

**Date of Decision : 14-03-2000**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Negotiable Instruments Act, 1881 (NI) — Section 138

**Citation :** (2000) 1 ALD(Cri) 790 : (2000) 3 CivCC 427 : (2001) 106 CompCas 507

**Hon'ble Judges :** Vaman Rao, J

**Bench :** Single Bench

**Advocate :** V.S.R. Anjaneyulu, for the Appellant;

**Final Decision :** Allowed

---

## **Judgement**

Vaman Rao, J.—Considering the circumstances of the case and the nature of the order I propose to pass, it will amount to subjecting the respondents to unavoidable burden if notice is ordered in this case.

2. This petition u/s 482 of the Code of Criminal Procedure, 1973, seeks quashing of the orders passed by the 5th Metropolitan Magistrate, Vijayawada, dated 10-2-2000, in CrI. M.P. No. 453 of 2000, in C.C. No. 490 of 1999, on his file.

3. The petitioner herein is the complainant in C.C. No. 490 of 1999 and the respondents are the accused therein. The complainant seeks to prosecute the respondents herein for an offence u/s 138 of the Negotiable Instruments Act, 1881. After the examination of PW-1, a petition was filed before the trial court for recalling that witness and receiving a document said to be a resolution of the board of directors dated 27-6-1997, so that this document could be marked through PW-1. This petition was opposed on the ground that it amounts to permitting the complainant to fill up the lacunae in the case. In the petition filed on behalf of the complainant it was stated that by mistake some other authorisation given by the board of directors was filed instead of the document

which has been mentioned in the list of the documents with the complaint, namely, the resolution of the board of directors dated 27-6-1997.

4. The learned Magistrate dismissed this application mainly on the ground that receiving this document and allowing it to be marked by recalling PW-1 amounts to permitting the complainant to fill up the lacunae in the case. The learned Magistrate referred to a judgment of this Court in the case of Satish & Co. v. S.R. Traders [1999] 95 Comp. Cas. 836. Obviously, the learned Magistrate has misread this case. What has been laid down in this case is that when as on the date of complaint there was no authorisation to the person who filed the complaint for doing so, subsequent authorisation cannot cure the defect. In this case the complainant has come forward with a version that it was under the resolution dated 27-6-1997 that a particular officer was authorised to file the complaint against the accused. This document is admittedly prior to the date of filing of the complaint. Under these circumstances the judgment relied upon by the learned Magistrate does not cover the facts of this case. It was further commented by the learned Magistrate that PW-1 during his cross-examination had admitted that the authorisation filed in the Court by him was not proper. The reasoning appears to be that in the teeth of this admission permitting him to file another document would amount to filling up the gaps in the prosecution case.

5. It appears that the learned Magistrate has wholly misappreciated the circumstances relating to the matter. It may be seen that in the list of documents, admittedly, filed along with the complaint, there is a mention of the resolution of board of directors dated 27-6-1997. Obviously, instead of this document some other document was filed along with the complaint, may be by mistake. The principle that the prosecution cannot be permitted at a later stage during the trial to fill up the gaps in the prosecution case would not apply to a case where an honest mistake made at an earlier stage is sought to be corrected. The Court is not required to punish the parties for the mistake committed by them or their counsel. Considering the circumstances, there is no reason why the document sought to be produced to be marked by recalling PW-1 should not have been permitted to be filed. It is apparent that when that document is sought to be admitted in evidence, it shall be open to the accused to question any infirmities relating to that document by giving an opportunity to cross-examine PW-1 with reference to that document. Considering these circumstances and to subserve the ends of justice, this petition is allowed and the order passed by the learned 5th Metropolitan Magistrate, Vijayawada, in CrI. M.P. No. 453 of 2000 in C.C. No. 490 of 1999, dated 10-2-2000, is quashed. The application of the complainant for recalling PW-1 for the purpose of marking the resolution of the board of directors of the complainant's company dated 27-6-1997, shall be deemed to have been allowed.

6. This petition is accordingly allowed.