**(2002) 05 DEL CK 0054**

**In the Delhi High Court**

**Case No :** Criminal M (M) No. 760 of 1998

Standard Chartered Bank APPELLANT

Vs

Mr. Ravi Bhandari RESPONDENT

**Date of Decision :** 14-05-2002

**Acts Referred:**

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

**Citation :** (2002) 5 AD 78 : (2002) 111 CompCas 544 : (2002) 98 DLT 289 : (2002) 63 DRJ 502 : (2002) 3 RCR(Criminal) 686

**Hon'ble Judges :** Surinder Kumar Aggarwal, J

**Bench :** Single Bench

**Advocate :** V.K. Shailendra, for the Appellant; O.P. Saxena, for the Respondent

## Judgement

S.K. Agarwal, J.—This petition u/s 482 Cr.P.C. is directed against the order dated 9th December, 1997 passed by the Court of Ms. Indermeet Kaur Kochhar, Addl. Sessions Judge, New Delhi dismissing revision of the petitioner and the order dated 15th March, 1997 passed by the Court of Metropolitan Magistrate dismissing the complaint u/s 138 of the Negotiable Instruments Act (for short "NI Act").

2. Facts in brief are that Ravi Bhandari, respondent No. 1 issued a cheque dated 29th September, 1995 of Rs. 15,300/- drawn on Indian Overseas Bank, defense Colony, New Delhi in favor of Standard Chartered Bank towards discharge of debts and other liabilities; on presentation of the same, the cheque was dishonoured; the payment was not made despite service of notice; petitioner filed a complaint through one of its employees against the respondent u/s 138 of NI Act. The complaint was dismissed by the trial court on the ground that the same was not filed by the duly authorised persons and that complaint could not be instituted without a resolution by the Board of Directors of the company. It was held:-

"Now case in hand the complainant is a company which is registered under

Companies Act. It must act through Board of Directors by passing resolution. In the above cited case the corporation which is analogous to registered company squarely covers this point. There is no resolution averred in the complaint, nor deposed by CW1 Mathew Thomas through which a person derives power or authorisation to launch criminal prosecution against any person. In the absence of resolution passed by Board of Directors by complainant company, complainant Mathew Thomas has no power to prosecute the accused on behalf of complainant company. The document Ex.CW1/A cannot fulfill the requirement of law."

3. While dismissing the complaint, reliance was placed on the observations made by the Supreme Court in Habibulla Khan v. State of Orissa and Anr., 1995 (2) CCC 40 and observations made by the Supreme Court in United Bank of India Vs. Naresh Kumar and others, were held to be not applicable in criminal cases. Revision filed by the petitioner also did not succeed.

4. Learned counsel for the petitioner argued that petitioner is a banking company incorporated with a limited liability in England, by the Royal Charter, 1853 having its branch office at Enkay House, Ground Floor 3-4 Malcha Marg Shopping Complex Chankyapuri, New Delhi; that Mathew Thomas, the Principal officer of the complainant bank was authorised to file and institute the criminal complaint; that the dismissal of the complaint by learned court below only on the ground that complainant was not a proper and authorised person, is not sustainable.

5. Law in this regard is now well settled. Anyone can set the criminal law in motion by filing the complaint Constituting an offence. For the offences under NI Act only criteria prescribed by Section 142 is that it must be instituted y the payee or holder in due course. The fact that the complaint lodged by a Manager or other employer, who had not been authorised by the Board of Directors to sign and file the complaint cannot be a ground for quashing the complaint. Contrary view was rejected in a recent Supreme Court decision in M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, , it was held:-

"10. In our view the reasoning given above cannot be sustained. Section 142 of the Negotiable Instruments Act provides that a complaint u/s 138 can be made by the payee or the holder in due course of the said cheque. The two complaints, in question, are by the appellant company who is the payee of the two cheques.

11. This Court has as far back as, in the case of Vishwa Mitter of Vijay Bharat Cigarette Stores, Dalhousie Road, Pathankot Vs. O.P. Poddar and Others, , held that it is clear that anyone can set the criminal law in motion by filing a complaint of facts Constituting an offence before a Magistrate entitled to take cognizance. It has been held that no Court can decline to take cognizance on the sole ground that he complainant was not competent to file the complaint. It has been held that if any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, then the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute. In the present case the

only eligibility criterion prescribed by Section 142 is that the complaint must be by the payee or the holder in due course. This criterion is satisfied as the complaint is in the name and on behalf of the appellant Company."

(emphasis supplied)

In view of this settled position of law, reference to other judgments is not necessary. Revision petition is allowed. Impugned judgment and order dismissing the complaints is set aside. The trial court is directed to further enquire into the matter in accordance with law.

Trial court record be sent back, forthwith.

Petition stands disposed of.

 