

**(2017) 01 GUJ CK 0213**  
**In the Gujarat High Court**  
**Case No : 19517 of 2013**

VISHAL KAMLESH PARIKH

APPELLANT

Vs

STATE OF GUJARAT & ANR

RESPONDENT

**Date of Decision :** 27-01-2017

**Acts Referred:**

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court  
[Negotiable Instruments Act, 1881](#), [Section 138](#), [Section 142\(2\)](#) - Dishonour of cheque for insufficiency, etc., of funds in the account - Cognizance of offences

**Citation :** (2017) 01 GUJ CK 0213

**Hon'ble Judges :** Biren Vaishnav

**Bench :** Division Bench

**Advocate :** KH BAXI, NIRAV C THAKKAR, HIMANSHU PATEL

## Judgement

1. This application has been filed under section 482 of the Code of Criminal Procedure, 1973. The respondent no. 2 is the original complainant who has filed a complaint invoking section 138 of the Negotiable Instruments Act, 1881 being Criminal Case No. 430 of 2012.

2. According to the complainant - respondent no. 2 herein in view of the fact that certain payments were due from the petitioner, towards those dues the petitioner issued certain cheques of different amounts as mentioned hereinbelow: Sr. No. Cheque No. Date Amount Drawn On 1 182658 24.12.2011 23,945/- The Naroda Nagrik Co-op Bank Ltd. 2 182662 24.12.2011 33,694/- -do- 3 182663 24.12.2011 22,840/- -do- 4 182664 24.12.2011 17,404/- -do- 5 182665 24.12.2011 17,404/- -do- 2.1 The cheques were deposited with the banks. However the cheques were dishonoured by the bank with an endorsement "Today pending balance insufficient". Accordingly, the complaint was filed.

3. Mr. K.H. Baxi, learned advocate appearing for the petitioner - original accused drew the attention of this court to the averments made in the complaint, to the

effect that the complaint was filed by one Abhay Prakash Natani. A perusal of the complaint, more particularly, para 2 thereof made it evident according to Mr. Baxi that the cheque was not issued by the complainant but was issued by Bimaladevi Rammanohar Natani and Rachana S Natani and the complainant was the Power of Attorney Holder of these individuals. Further, attention is drawn to the photocopy of the cheque at page 14 of the paperbook which according to Mr. Baxi makes it evident that Bimla Natani is the payee of the cheque. Reliance is placed by Mr. Baxi on a decision of the Supreme Court in the case of M/s. Shankar Finance & Investments vs. State of Andhra Pradesh reported in AIR 2009 SC 422, more particularly, paragraphs no. 9 which is reproduced as under: "9. The next question is where a proprietary concern carries on business through an attorney holder, whether the attorney holder can lodge the complaint? The attorney holder is the agent of the grantor. When the grantor authorizes the Attorney Holder to initiate legal proceedings and the attorney holder accordingly initiates legal proceedings, he does so as the agent of the grantor and the initiation is by the grantor represented by his attorney holder, and not by the attorney holder in his personal capacity. Therefore where the payee is a proprietary concern, the complaint can be filed : (i) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the "payee"; (ii) The proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (iii) the proprietor or the proprietary concern represented by the attorney- holder under a power of attorney executed by the sole proprietor. It follows that in this case the complaint could have been validly filed by describing the complainant in any one of the following four methods :

"Atmakuri Shankara Rao, sole proprietor of M/s. Shankar Finance & Investments" Or "M/s. Shankar Finance & Investments a sole proprietary concern represented by its proprietor Atmakuri Shankara Rao" Or "Atmakuri Shankara Rao, sole proprietor of M/s. Shankar Finance & Investments, represented by his Attorney Holder Thamak Satyanarayana" Or "M/s. Shankar Finance & Investments, a proprietary concern of Atmakuri Shankara Rao, represented by his Attorney Holder Thamada Satyanarayana". What would have been improper is for the Attorney holder Thamada Satyanarayana to file the complaint in his own name as if he was the complainant. "

3.1 According to Mr. Baxi, in view of the fact that the complaint was filed by the complainant in his own name and not through the Power of Attorney holder, the complaint itself was not maintainable.

4. Mr. Nirav Thakkar, learned advocate appearing for the respondent no. 2 has vehemently opposed the application and submitted that the same deserves to be rejected. He has relied upon a decision of the Supreme Court in the case of A.C. Narayanan vs. State of Maharashtra and Another with G. Kamalakar vs. Surana Securities Limited and Another reported in (2014) 11 SCC 790 to contend that it is always open for the court to proceed further and issue process in a complaint

filed at the behest of the Power of Attorney holder and merely because the cause title of the complaint does not clarify the position that the complaint has been filed through the Power of Attorney holder extraordinary powers under section 482 of the Code of Criminal Procedure should not be exercised to quash the complaint merely on this count. He also relied upon another decision of the Supreme Court in the case of Vinita S. Rao vs. Essen Corporate Services Private Limited and Another reported in (2015) 1 SCC 527 to reiterate the same contention.

5. Having considered the rival submissions advanced and the decisions of the Apex Court cited by learned advocates for both the sides, more particularly the decision of the Apex Court in the case of M/s. Shankar Finance & Investments (supra), this court is of the opinion that the said decision makes it evident that if the complaint is filed through a Power of Attorney holder, the cause title of the complaint should be titled as one being proceeded through the Power of Attorney holder which is also evident from reading the provisions of Section 142(2) of the Negotiable Instruments Act. 5.1 The Apex Court in the decision of A.C. Narayanan (supra) cited by Mr. Thakkar, learned advocate for respondent no. 2, after considering several judgements on this issue categorically observed in para 31 of the judgement as under:

"31. In view of the discussion, we are of the opinion that the attorney holder cannot file a complaint in his own name as if he was the complainant, but he can initiate criminal proceedings on behalf of his principal. We also reiterate that where the payee is a proprietary concern, the complaint can be filed:

- (i) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the "payee";
- (ii) the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and
- (iii) the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor. "

5.2 Therefore, on this technical issue the complaint in question i.e. Criminal Complaint No. 430 of 2012 is required to be quashed and set aside.

6. Accordingly, petition is allowed. The complaint being Criminal Case No. 430 of 2012 is hereby quashed and set aside. It is however clarified that this order quashing the complaint has been passed solely on the technical ground of the complaint being filed by the Power of Attorney holder in his own name and not on behalf of the principal. This court has not entered into the merits of the matter. Rule is made absolute accordingly.