

Ruby Leather Exports Vs. K. Venu

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Court : Chennai

Decided On : Dec-10-1993

Reported in : [1995]82CompCas776(Mad)

Judge : Arunachalam, J.

Acts : Criminal Procedure Act, 1973 - Sections 2 and 219; [Negotiable Instruments Act, 1881](#) - Sections 7, 9, 138, 141 and 142

Appeal No. : Criminal Original Petitions Nos. 8731 of 1992, 677 of 1992, 5770 of 1992 and 13963 of 1991

Appellant : Ruby Leather Exports;r. Ramakrishnan;vasumathi Mills (Private) Ltd.;r. Balasubramanian and Others

Respondent : K. Venu;b. Logaraj;eastern Cotton Traders;A. V. Arumuga Perumal

Advocate for Def. : S. Hamparithi,;P. Sundaram,;M. Shakir Ali and;K.V. Manichavasagan, Advs.

Advocate for Pet/Ap. : T.K. Sampath,;K. Sridhar,;K.V. Sridharan and;K. Murugan, Advs.

Judgement :

Arunachalam, J.

1. All these criminal original petitions are disposed of together by a common order, for a single question of law of vital importance, has been raised. Subsidiary questions argued, in one or other of the matters, will be dealt with individually, after answering the main contention.

2. It will be better to state the facts in each one of these original petitions, before framing the question to be answered and embarking upon a discussion on the same.

3. Criminal Original Petition No. 8731 of 1992 : The petitioners are A-1 and A-2 in C. C. No. 9123 of 1991, pending on the file of Fifth Metropolitan Magistrate, Egmore, Madras. They are alleged to have committed an offence punishable under section 138 of the Negotiable Instruments Act, on the basis of a private complaint initiated by the respondent, Venu. While seeking quashing of the pending prosecution Mr. T. K. Sampath, the petitioners' counsel, contended that an authorised representative will not be competent to initiate a prosecution under section 142 of the Negotiable Instruments Act and on such complaint, the learned magistrate could not have taken cognizance.

4. The next contention was that in the event of a part payment being made by the drawer of the cheque, after issue of a statutory notice, a prosecution under section 138 of the Act cannot be initiated. This ground, though not taken in the memorandum, was permitted to be raised. The allegations in the complaint show that the respondent was at the relevant time working as an accountant in Vandhana Chemicals, Madras, who is the payee in the instant prosecution. The cause title in the complaint shows K. Venu, S/o M. Ekambaram, representing Vandhana Chemicals, Madras, as the complainant. Though in paragraph (3) of the complaint it has been stated that K. Venu was doing all sorts of business transactions on behalf of the abovesaid chemicals company as such and he was very well acquainted with the facts and circumstances of the case and further the managing director of the abovesaid chemicals had authorised him to file a criminal complaint against the petitioners before the competent court, no such authorization is available in the case records summoned from the trial court. The list of documents, stated to have been appended to the complaint, indicates at

serial No. 8, about the authorization letter issued by the managing partner.

5. Criminal Original Petition No. 677 of 1992 : The petitioner, Ramakrishnan, is the sole accused in C. C. No. 6436 of 1991, pending on the file of the Fifteenth Metropolitan Magistrate, G. T. Madras. At the instance of B. Logaraj, payee, represented by his power of attorney, C. Balasundaram, the petitioner is being prosecuted for having allegedly committed an offence punishable under section 138 of the Negotiable Instruments Act. A true copy of the general power of attorney has been appended to the complaint. The contents of the complaint also clearly spell out, that the payee had authorised his power of attorney agent, C. Balasundaram, to file the impugned complaint.

6. Mr. K. Sridhar, learned counsel, appearing on behalf of the petitioner, contended that Balasundaram was neither the payee nor the holder in due course and hence under section 142 of the Act, the trial magistrate could not have taken cognizance of the offence alleged. He then pointed out from the original records summoned from the trial magistrate, that certain corrections in the vakalat and sworn statement, with reference to the date, were apparent. In that background, he pointed out, the date of complaint written in ink, stating it as October 21, 1991, though the seal of the Magistrate bears the date September 21, 1991. These differences in dates, according to the petitioner's counsel, are relevant for the purpose of calculating limitation.

7. Criminal Original Petition No. 5770 of 1992 : The petitioner, Vasumathi Mills (Private) Ltd., Coimbatore, is the sole accused in S. T. R. No. 1160 of 1991, pending on the file of the Judicial Magistrate No. II, Coimbatore. Prosecution against the petitioner has been initiated by the Eastern Cotton Traders, Calcutta, through partner, Narayani Devi Agarwal, represented by power agent, Kailash Prasad Agarwal. The general power of attorney has been appended to the complaint. Even in the body of the complaint, the presentation of the complaint, through the power agent, has been specifically mentioned.

8. Mr. K. V. Sridharan, learned counsel appearing on behalf of the petitioner, contended that there was no provision under the Negotiable Instruments Act, to facilitate filing of a complaint on behalf of a payee or holder in due course. He

referred to section 11 of the Indian Penal Code which defines 'person' as including any company or association, or body of persons whether incorporated or not. As to how exactly service of summons, should be executed on corporate bodies and societies, he referred to section 63 of the Code of Criminal Procedure. Pointing out the provisions of section 142(a) of the Negotiable Instruments Act, he submitted that a court can take cognizance, only upon a complaint in writing made by the payee or as the case may be, by the holder in due course of the cheque. The emphasis was on the words 'in writing'. A reference was then made to section 2(d) of the Code of Criminal Procedure, defining 'a complaint', which reads that a complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. A reference was also made by petitioner's counsel as well as Mr. K. Sridhar, counsel for the petitioner, in Criminal Original Petition No. 677 of 1992 to the provisions of Order 3, rule 2 of the Code of Civil Procedure, to contend that contra-distinguished from the Code of Criminal Procedure and the Negotiable Instruments Act, recognised agents of parties were permitted to sue on behalf of the parties concerned.

9. The next ground was that more than three instances have been clubbed together in a single prosecution which was contrary to the mandate under section 219 of the Code of Criminal Procedure.

10. While refuting the contentions of petitioner's counsel, Mr. M. Shakir Ali, respondent's counsel, brought to my notice a decision of Janarthanam J. in Gopalakrishna Trading Co. v. D. Baskaran to emphasize that when the cheque stood issued in favour of a company, a complaint under section 138 of the Negotiable Instruments Act can be filed, by its manager, partner, director or any person authorised by the company.

11. Criminal Original Petition No. 13963 of 1991 : The petitioners, four in number, are A-1 to A-4 in C. No. 293 of 1990, pending on the file of the Judicial Magistrate, Aruppukottai, alleging, that the petitioners had committed an offence punishable under section 138 of the Negotiable Instruments Act. The respondent,

A. V. Arumuga Perumal, had instituted the private complaint, as the power of attorney holder of V. A. Vijayalakshmi, his wife, and payee, in the cheques concerned, which are the subject-matter of this prosecution. The general power of attorney executed by V. A. Vijayalakshmi in favour of the respondent stands appended to the complaint. Mr. K. Murugan, learned counsel appearing on behalf of the petitioner, while contending that a power of attorney was not competent to initiate a complaint under section 138 of the Act, to be validly taken cognizance of by the trial magistrate referred to section 9 of the same Act, wherein 'holder in due course' has been defined to mean any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or endorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. He also pointed out the meaning of 'payee' under section 7 of the Act, referring to the person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid. Section 8 of the Act defines 'holder' as any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction. Petitioners' counsel referred to the opening words of section 142 of the Act and contended that the provisions of the Code of Criminal Procedure, stood excluded and, therefore, it was all the more relevant, that under section 142(a) of the Act, a complaint can be made only by the payee or as the case may be by the holder in due course of the cheque, and none else. He pointed out that before a person can be held to be a holder in due course, consideration must have passed and that was a vital circumstance, which should be taken note of, while construing the provisions under section 142 of the Act.

12. Thiru K. V. Manickavasagan, learned counsel appearing on behalf of the respondent, contended that the words 'in writing' found in section 142 of the Act were needed to distinguish it from section 2(d) of the Code of Criminal Procedure, which takes into its fold a complaint, to mean any allegation made orally or in writing. He then submitted that no provision has been made, as far as the complainant is concerned, when they happened to be companies, though under

section 141 of the Act, the persons who are liable to be prosecuted as the accused, if the offence were committed by the companies, has been provided. He also referred to section 5 of the Power of Attorney Act to contend that a married woman of full age, by virtue of the Power of Attorney Act, has power to appoint an attorney on her behalf.

13. Since the main ground urged in all these petitions, related to a substantial question of law, I requested Mr. B. Sriramulu, the learned public prosecutor, to assist the court. He referred to section 141 of the Negotiable Instruments Act, wherein provisions have been made for prosecution of a class of offenders, if the offence were to be committed by companies, and argued that no such provision forms part of the Act, if a company happened to be the complainant. He contended, that a joint complaint does not appear to be contemplated either under the Negotiable Instruments Act, or under the Code of Criminal Procedure. He then submitted that if there was no provision in that special Act, as to who could validly initiate a prosecution, if the complainant were to be a company, naturally, recourse must be had to general law. He submitted, that under section 142 of the Act, there is no prohibition for a power of attorney to initiate a complaint, on behalf of the payee or, as the case may be, the holder in due course of the cheque. He emphasised the need to keep in the background the object of the Act, while construing section 142(a) of the Act. While inserting Chapter XVII, comprising sections 138 to 142, with effect from April 1, 1989, in the Negotiable Instruments Act, the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (66 of 1988), stated that it was so done with a view to enhance acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds in the accounts or for the reason that it exceeds the arrangements made by the drawer with adequate safeguards to prevent harassment of honest drawers. This is exactly what clause 11 of the Amendment Act states.

14. The learned public prosecutor then referred to sections 195 to 199 of the Code of Criminal Procedure, which are exceptions to general law, that complaints cannot be initiated by any person save under these sections. Only persons contemplated therein can set the law in motion. Specific emphasis was made on

the person aggrieved who will be entitled under some of those sections to set the law in motion and none else, unless referred to in the section itself. For instance, section 198 of the Code of Criminal Procedure permits complaints being preferred by some other person, on behalf of the person aggrieved, with the leave of court. Under certain circumstances, some other person authorised by the husband, in accordance with the provisions of the said section, can still make a complaint. Certain categories of persons, who can initiate complaints on behalf of the wife, if she happened to be the aggrieved person, also form part of that section. The learned public prosecutor referred to section 1A of the Power of Attorney Act, which defines 'a power of attorney' as including any instrument empowering a specified person to act for and in the name of the person executing it. He brought to my notice the decision of the Supreme Court in *Ram. Chandra v. State of Bihar*, : 1967 CriLJ409 , wherein it was held that a prosecution launched at the instance of a person holding a power of attorney of an electricity supply company was a person aggrieved within the meaning of section 50 of the Indian Electricity Act. He then referred to certain decided cases to contend that while construing the provisions of section 142(a) of the Negotiable Instruments Act, reason and common sense will have to prevail, for, otherwise the object of the Act would get frustrated.

15. The main question to be decided in this batch of petitions, can be framed as follows :

Can a power of attorney agent or a person authorised in writing by the payee or the holder in due course of the cheque, be competent to make a complaint in writing under section 142(a) of the Negotiable Instruments Act to facilitate valid cognizance being taken by the Magistrate

16. To appreciate this question of vital importance, it will be necessary to extract section 142(a) of the Negotiable Instruments Act, which reads as hereunder :

'Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) -

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;'

17. There cannot be a second opinion, due to the opening words of the section, that, notwithstanding anything contained in the Code of Criminal Procedure, this special enactment, contemplates, the manner in which a complaint could be taken cognizance of. The complaint must necessarily be in writing made by the payee or, as the case may be, the holder in due course of the cheque. As long as there is no prohibition on the power of attorney agent acting on behalf of the payee or holder in due course of the cheque, can it be said that under no circumstances a complaint can be taken cognizance of, except when it was made by the payee or, as the case may be, the holder in due course of the cheque

18. Eventualities, varied and numerous, which may arise on account of several considerations could not have been fully visualized by the Legislature and hence while interpreting the statute, in all fairness, the basic. concept and purpose for which the Act was passed should weigh in the judicial mind. If the foundation or the purpose intended by the law enacted gets disclosed in that proceeding initiated, merely because a particular contingency not vitally irreconcilable had not been expressly stated, that would not suffice to throw out the prosecution even at the threshold.

19. In the present commercial world wide and diverse dependence on another to get things done appears almost to be an indispensable necessity. A power of attorney authorizes a person to act for another, virtually stepping into the shoes of the latter. Jowitt in his Dictionary of English Law, 1959, states, that a power of attorney is a formal instrument by which one person empowers another to represent him or act in his stead for certain purposes.

20. According to Stroud's Judicial Dictionary, 'a power of attorney' is an authority whereby one is 'said in turn, stead, or place of another' to act for him. In a power of attorney, the authority given by a principal to his agent is an express authority enabling law to bind the former by the acts done by the latter, within the scope of that authority.

21. At this stage, it will be relevant to refer to two decisions, one rendered by this court, and the other by the Supreme Court. Kunhamed Kutti J. in *Sambandam. v. G. Natesan* [1966] CrL. LJ 554 (Mad), while construing a complaint preferred by a power of attorney holder as the agent of husband under section 199 of the Code of Criminal Procedure, 1898, when the husband who was in Malaya, had authorized his power of attorney holder, to file the complaint, since he himself was unable to proceed to India, held that the complaint of power of attorney holder, on such a ground, was not competent. Under section 199 of the Code of Criminal Procedure, 1898, no court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman or in his absence, made with the leave of the court by some person who had care of such woman on his behalf at the time when such offence was committed. This section contains two provisos which read as hereunder :

'Provided that, where such husband is under the age of eighteen years, or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the court, make a complaint on his behalf :

Provided further that where such husband is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, and where for any reason no complaint has been made by a person having care of the woman as aforesaid, some other person authorised by the husband in accordance with the provisions of sub-section (1) of section 199B may, with the leave of the court, make a complaint on his behalf.'

22. Obviously, in the case decided by Kunhamed Kutti J., neither the provisos to section 199 nor the provisions of the main section itself stood attracted. Learned judge has specifically found that it was not seriously sought to be contended that the circumstances which would justify an agent to file a complaint had been satisfied in that case. The only reason given by him in the power of attorney was that he was unable to proceed to India to file a complaint and hence he had authorised the power of attorney holder to file the complaint. Such a ground, the learned judge has observed, was not countenanced by section 199 of the Code of

Criminal Procedure. The law laid down by Kunhamed Kutti J. will have to be restricted to the facts placed before him, while for section 199 furnished other modes, to set the law in motion, when the husband himself was not in a position to institute the complaint. Under section 199, initiation of a complaint by any other person was not totally barred, as carved out therein. Hence, the decision in the aforesaid case will not be an authority to conclude that, under no circumstances, a power of attorney holder can institute a complaint on behalf of the payee or holder in due course contemplated under section 142 of the Negotiable Instruments Act.

23. In *A. K. Roy v. State of Punjab*, : 1986 CriLJ2037 , the question that arose for consideration has been succinctly stated by the Supreme Court in paragraph (4) of the judgment, which reads as hereunder :

'4. It is argued on behalf of the appellants that as a matter of construction the first part of section 20(1) of the Act makes it clear that a prosecution for offences under the Act not being an offence under section 14 or section 14A, can be instituted only by one of the following authorities, namely : (i) the Central Government or the State Government, or (ii) with the written consent of the Central Government or the State Government, or (iii) a person authorised in this behalf by a general or special order by the Central Government or the State Government, or (iv) with the written consent of a person so authorised. It is urged that the opening words of section 20(1) 'no prosecution for an offence under this Act. . . shall be instituted except by' being of a negative character, the requirements of the section are imperative and that a discretionary power must, in general, be exercised by the authority to which it has been committed. Emphasis is placed on the words 'in this behalf', in the second part of section 20(1) of the Act for the submission that the delegation of powers to launch a prosecution by the Central Government or the State Government, by general or special order, must be for a specific purpose in that behalf, viz., to authorise the institution of prosecutions under the Act. It was accordingly submitted that rule 3 of the Punjab Rules which enables the Food (Health) Authority to sub-delegate his power 'to authorise the launching of a prosecution for an offence under the Act' to the Food Inspector, was ultra vires the State Government and could not be sustained on the terms of section 24(2)(e),

i.e., the general power of the State Government under section 24(2)(e) of delegation of its powers and functions under the Act.'

24. The reply to the said contention forms part of paragraph 5 of the judgment, which is extracted hereunder :

'5. In reply, learned counsel for the respondents contends that rule 3 is in the nature of a general order in terms of section 20(1) of the Act and therefore the State Government has not only delegated its powers 'to launch a prosecution for an offence under the Act' under section 20(1) to the Food (Health) Authority, i.e., the Director of Health Services, Punjab but also under the said rule provision has been made for further sub-delegation of his power to authorise the launching of prosecutions under section 20(1) to the Food Inspectors.'

25. While construing the provisions of section 20(1) of the Prevention of Food Adulteration Act read with section 24(1) of the Act, the Supreme Court stated as follows :

'10. A careful analysis of the language of section 20(1) of the Act clearly shows that it inhibits institution of prosecutions for an offence under the Act except on fulfilment of one or the other of the two conditions. Either the prosecutions must be instituted by the Central Government or the State Government or a person authorised in that behalf by the Central Government or the State Government, or the prosecutions should be instituted with the written consent of any of the four specified categories of authorities or persons. If either of these two conditions is satisfied, there would be sufficient authority for the institution of such a prosecution for an offence under the Act. The provision contained in section 20(1) of the Act does not contemplate the institution of a prosecution by any person other than those designated. The terms of section 20(1) do not envisage further delegation of powers by the person authorised, except that such prosecution may be instituted with the written consent of the Central Government or the State Government or the person authorised. The use of the negative words in section 20(1) 'No prosecution for an offence under this Act. . . shall be instituted except by or with the written consent of' plainly make the requirements of the section imperative. That conclusion of ours must necessarily follow from the well-known rule of construction

of inference to be drawn from the negative language used in a statute stated by Craies on Statute Law, sixth edition, at page 263, in his own terse language :

'If the requirements of a statute which prescribe the manner in which something is to be done are expressed in negative language, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that those requirements are in all cases absolute, and that neglect to attend to them will invalidate the whole proceedings.'

Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the Legislature in enacting section 20(1) was to confer a power on the authorities specified therein which power had to be exercised in the manner provided and not otherwise. '

26. It was ultimately concluded, that the terms of section 20(1) of the Act did not postulate further delegation by the person so authorised. He can only give his consent in writing, when he was satisfied that a prima facie case existed, in the facts of a particular case and record his reasons for the launching of such prosecution in the public interest. The question, whether power of attorney agent can initiate a prosecution under circumstances similar contemplated under section 142 of the Negotiable Instruments Act was not the question posed for consideration by the Supreme Court. The manner in which cognizance of offences could be taken stood provided under section 20(1) of the Act, which took in its fold persons authorised in that behalf by general or special order by the Central Government or the State Government. In this context, it will be relevant to refer to the decision of the Supreme Court in *Ram Chandra v. State of Bihar*, : 1967 CriLJ409 . That was a case where the Supreme Court was interpreting the words 'person aggrieved', within the meaning of section 50 of the Indian Electricity Act. Section 50 of the Act, at the relevant time, read as follows (at p. 352) :

'No prosecution shall be instituted against any person for any offence against this Act or any rule, licence or order thereunder, except at the instance of the Government or an Electricity Inspector, or of a person aggrieved by the same.'

27. The prosecution here was commenced with a charge-sheet submitted by the police to the judicial magistrate. The offences were investigated into by the police after the first information report was lodged with them by Bhattacharya. What was contended was that information given by him could not entitle the police to submit the charge-sheet. It was also said that the submission of a charge-sheet by the police was not the same thing as institution of prosecution at the instance of the State. It was, however, not disputed, that if the law was set in motion by a person aggrieved by making a first information report to the police, a charge-sheet could properly be submitted by the police. In that context, the Supreme Court has stated as follows (at p. 352) :

' . . . It is true that Bhattacharya was not himself a 'person aggrieved' and that the 'person aggrieved' was the P. E. S. Co. The P. E. S. Co., however, is a body corporate and must act only through its directors or officers : Here we have the evidence of Ramaswami to the effect that he held a general power of attorney from the P. E. S. Co., and that he was specifically empowered thereunder to act on behalf of P. E. S. Co., in all legal proceedings. The evidence shows that it was at his instance that Bhattacharya launched the first information report and, therefore, it would follow that the law was set in motion by the 'person aggrieved'. The objection based on section 50 must, therefore, be held to be untenable.'

28. This decision of the Supreme Court will be an authority for the proposition that a power of attorney agent duly constituted could act on behalf of a person aggrieved. The object of the provisions under section 142(a) of the Negotiable Instruments Act, providing for the making of a complaint by the payee or as the case may be, the holder in due course of the cheque, appears to be that the person aggrieved has to set the law in motion. If the payee or the holder in due course initiates complaints through his power of attorney agent, it cannot be stated that the language of section 142(a) of the Act, will stand violated.

29. In *Vishwa Mitter v. O. P. Poddar*, : 1984 CriLJ1 , while construing a complaint preferred by a dealer and constituted attorney of owners of a registered trade mark, for infringement of the trade mark, punishable under sections 78 and 79 of the Trade and Merchandise Marks Act 43 of 1958, which was dismissed on the

sole ground that the complainant was not the owner of the impugned trade mark, the Supreme Court, while reversing the said verdict, stated as follows (at p. 18) :

' . . To say that the owner of the registered trade mark can alone file the complaint is contrary to the provisions of the statute and common sense and reason. . . Even otherwise, in the absence of a specific qualification, if the person complaining has a subsisting interest in the protection of the registered trade mark, his complaint cannot be rejected on the ground that he had no cause of action nor sufficient subsisting interest to file the complaint.'

30. It was noticed, that in the case decided by the Supreme Court, the complainant was not only a dealer in beedies, manufactured and sold by the registered owner of the trade marks, but he was also the constituted attorney of the owners of the registered trade mark. It was further observed as hereunder (at p. 7) :

' . . It must, however, be conceded that where a provision to the contrary is made in any statute, which may indicate the qualification or eligibility of a complainant to file the complaint, the magistrate before taking cognizance is entitled and has power to inquire whether the complainant satisfies the eligibility criteria.'

31. Certain examples have been quoted by the Supreme Court. In other words, unless any statutory provision prescribes any special qualification or eligibility criteria for setting the criminal law in motion, no court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint.

32. The eligibility criteria under the Negotiable Instruments Act is that the complaint should be made by the payee or as the case may be, the holder in due course of the cheque. This eligibility criteria does not get disturbed if a power of attorney agent duly constituted initiates private complaints, for, as I have stated earlier, the power of attorney agent steps into the shoes of the payee or the holder in due course of the cheque. It is not as though total strangers, not contemplated under section 142(a) of the Act, had initiated complaints, which can be done under the general law, for there is no specific locus standi for setting the criminal law in motion, unless as I have stated earlier, eligibility criteria intervenes. Once a power

of attorney agent makes the complaint, for all practical purposes, it is the payee or the holder in due course of the cheque who is the complainant. The words 'in writing' mentioned in section 142(a) of the Negotiable Instruments Act; to my mind, cannot be restricted to mean, that it must be in writing by the payee himself or the holder in due course himself, for, if it is made by the power of attorney agent, it is tantamount to the complaint being made by the payee or, as the case may be, the holder in due course of the cheque. As rightly pointed out by one of the counsel, the words 'in writing' appear to have been introduced under section 142(a) of the Act, in contradistinction to section 2(d) of the Criminal Procedure Code, which postulates an oral complaint as well. The observations of the Supreme Court in *Antulay (A. R.) v. R. S. Nayak*, : 1984 CriLJ647 , appear to be relevant in this context (at p. 723) :

' . . . This general principle of nearly universal application is founded on a policy that an offence, i.e., an act or omission made punishable by any law for the time being in force (see section 2(n) of the Criminal Procedure Code) is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission' made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary... To hold that such an exception exists that a private complaint for offences of corruption committed by a public servant is not maintainable, the court would require an unambiguous statutory provision and a tangled web of argument for drawing a far-fetched implication, cannot be a substitute for an express statutory provision. . .

33. It was emphasised that locus standi of the complainant was a concept foreign to criminal jurisprudence save and except where the statute creating an offence provides for the eligibility of the complainant thereby excluding the general principle by necessary implication. Those eligible, in the instant petitions, are the payee or the holder in due course.

34. There is no ambiguity in section 142(a) of the Negotiable Instruments Act, which prohibits or excludes complaints being initiated by power of attorney agents of the payee or the holder in due course. To reiterate, the observations of the Supreme Court, while construing section 50 of the Indian Electricity Act, will be totally relevant in this context.

Janarthanam J.

35. In *Gopalakrishna Trading Co. v. D. Basakaran* [1992] 3 Crimes 1094; after extracting section 142(a) of the Negotiable Instruments Act, in a case where a complaint was filed by a manager of a company, which was the payee, observed as follows (at page 56 of 80 Comp Cas) :

'From the provisions as extracted above, it is rather crystal clear that for the infraction or violation of the provisions of section 138 of the Negotiable Instruments Act, the court is empowered to take cognizance of such offence only if the complaint is preferred by the payee or the holder in due course of the cheque. The special definition of 'company' under the Act means any body corporate including a firm or other association of individuals which may be the payee or the holder in due course of the cheque. The question that arises for consideration is as to what is the procedure to be followed in the case of preference or lodging of a complaint by the company, as defined under the Act. Known well it is, the company is a legal entity not having soul, mind, body and limbs to walk to the court for preference of a complaint for the alleged infraction or violation of the provisions of section 138 of the Negotiable Instruments Act. The company as such has to be represented by some human agency in preferring a complaint before the court. There is no express or explicit provision in the Act as to in what manner the company is to be represented in preferring a complaint before the court for the alleged infraction or violation of the provisions under section 138 of the Act. The dictates of common sense, practical wisdom, prudence and expedience impel the court in such a situation to enable the company to present a complaint before the court represented by some person connected with the affairs of the company. The person connected with the affairs of the company, in the normal run of things may be either its manager, partner, managing partner or director or any other person

authorised by the company, who can represent it during the course of legal proceedings before the court. Only by making such a construction and interpretation of the provisions of the aforesaid sections the provisions of the Act can be made to work and life thereby given, having teeth for the enforcement of the provision and any other interpretation given would have the effect of making no sense of those provisions, and will be only in the sense of defeating the very object for which the provisions had been enacted by the Legislature.

In the instant case the complaint having been given by Gopalakrishna Trading Company represented by its manager, it cannot be stated that the complaint had been preferred by any person other than the company, which is the payee and which is entitled to prosecute the drawer of the cheque for committing the alleged infraction or violation of the provisions of section 138 of the Act.'

36. The learned judge has clearly expressed, that while interpreting or constructing the provisions of a statute, the object of the Act should not be allowed to be defeated.

37. A single judge of the Kerala High Court in C. B. S. Gramophone Records and Tapes (India) Ltd. v. Noorudeen (P. A.) [1992] 2 MWN (CrI.) 160; [1992] 73 Comp Cas 494, while considering the validity of a complaint filed by the accounts officer of the payee company, observed that along with the complaint the petitioner-company had filed the dishonoured cheque and a certified true copy of the board resolution passed at the board meeting of the company, which purported to authorise Krishnan, the said accounts officer, to sign necessary papers, documents and to instruct, act and appear before any court of law at Ernakulam in connection with any legal proceedings that may be instituted on behalf of the company against such debtors. From the description of the complainant in the complaint, the learned judge observed, that it was evident that the company C. B. S. Gramophone Records and Tapes (India) Ltd. was the complainant and N. K. Krishnan was only a representative of the company. In that context, it was stated, that it has to be held that the payee of the cheque and the complainant were the same. What had been lost sight of by the magistrate in that case was that Krishnan was not the complainant, but he was only representing the company

which was the payee of the cheque. The decision of the Kerala High Court supports my view that so long as the complainant is the payee or the holder in due course, a power of attorney agent will not be prohibited from initiating and pursuing a complaint for an offence punishable under section 138 of the Negotiable Instruments Act.

38. Reference to Order 3, rules 1 and 2 of the Code of Civil Procedure can have no bearing while interpreting the provisions of section 142(a) of the Negotiable Instruments Act. Reference to section 11 of the Indian Penal Code and section 63 of the Code of Criminal procedure do not really concern directly the issue involved in all these petitions. The definitions of payee or holder in due course under sections 7 and 9 of the Act, even if substituted in section 142(a) of the Act, cannot prohibit a power of attorney agent from acting on behalf of the said payee or the holder in due course. The question whether the complainant in cases referable to the holder in due course, was really one such, will have to be relegated for appreciation of evidence, after it is brought on record, before the learned magistrate. That cannot be confused with the entitlement and eligibility to institute a complaint under section 142(a) of the Negotiable Instruments Act.

39. A question was asked by one of the counsel if the time span, stipulated under clauses (a), (b) and (c) of section 138 of the Negotiable Instruments Act can be allowed to be thwarted in the event of this court holding that a power of attorney will be competent to initiate a private complaint by stepping into the shoes of the payee or the holder in due course. This interrogative submission appears to be totally irrelevant and not connected to the issue involved. If the statute prescribes a limitation, it has to be strictly followed. In certain cases, even if limitation is prescribed, provisions do surface for certain condonations. It is not known as to how the time essence contemplated under section 138 of the Act could be confused with the provisions that form part of section 142(a) of the Act.

40. It will be relevant at this stage to refer to the judgment of the Kerala High Court in *Matha Plantations v. Deputy Commissioner of Agricultural Income-tax* [1983] 150 ITR 480; [1983] KLT 848. Paripoornan J., on the language of rule 2 of the Agricultural Income-tax Rules (Kerala) read with section 27 of the Agricultural

Income-tax Act, 1950 (Kerala), had found that the application for registration shall have to be signed by all the partners personally and that the application signed by a power of attorney holder will not satisfy the requirements of law. In that case, the firm was held to be not entitled to registration on that ground. Rule 2, so far as relevant for our purpose reads as follows (at page 482) :

'Such application shall be signed by all the partners (not being minors) personally.....

41. Whenever the statute required a particular act to be done personally, it stood so mentioned. The law laid down by Paripoornan J. is one more indication that when the statute does not insist that the complaint should be filed personally by the payee or the holder in due course, such a meaning cannot be read into it. There cannot be any dispute that when the law specifies that an act should be done in a particular way, it should be so done in that way, and not in any other way. Once there cannot be any doubt that the power of attorney agent is virtually the payee himself or the holder in due course, it cannot be construed that the act of filing a complaint by a power of attorney is done in a way not contemplated by section 142(a) of the Act. It will not be possible to hold, on the analogy of section 141 of the Act, which refers to offences by companies, that such of those persons contemplated therein will not be competent to file complaints when the statute is silent on that aspect. If the power of attorney agent can act instead of an individual payee or a holder in due course, it will equally be competent for a power of attorney agent of a company, explained under section 141 of the Act, as meaning any body corporate including a firm or other association of individuals, to file a complaint on behalf of the company.

42. The answer to the question posed is that a power of attorney agent of the payee or the holder in due course of the cheque will be competent to make a complaint in writing under section 142(a) of the Negotiable Instruments Act, to facilitate valid cognizance being taken by the Magistrate. It makes no difference if the power of attorney is executed by an individual in favour of another or executed by a company in favour of a particular person. This verdict of competency of a power of attorney to prefer a complaint on behalf of the payee or holder in due

course of the cheque, to be taken cognizance of, will not preclude the accused from raising any valid defence open to them under law, including the validity of the power of attorney. I am not in these batch of cases, deciding whether a person authorised in writing by a payee or the holder in due course (individual or a company) would suffice to take cognizance, for that issue does not arise directly in these petitions. However, on that aspect, there is some indication available in the judgments of Janarthanam J. of this court in Gopalakrishna Trading Co. v. D. Baskaran [1994] 80 Comp Cas 53 and Ramakrishnan J. of the Kerala High Court in C. B. S. Gramophone Records and Tapes (India) Ltd. v. Noorudeen (P. A.) [1992] 73 Comp Cas 494; [1992] 2 MWN (CrL.) 160.

43. Having answered the question posed for determination, it will be now necessary to independently dispose of these four petitions.

44. Criminal Original Petition No. 8731 of 1992 : The cause title in the complaint shows K. Venu as the complainant. He has stated even in the cause title that he was representing Vandhana Chemicals, Madras. It cannot be stated that the complainant is the payee, Vandhana Chemicals, which stood represented by Venu, an authorised representative, who could be deemed as such in law. Further, as I have already stated while narrating the facts, no authorization as such was also produced before the trial Magistrate at the time of taking cognizance. On the peculiar facts of this case, it has to be held that cognizance of the impugned complaint was barred under section 142(a) of the Negotiable Instruments Act.

45. The next contention urged by Mr. T. K. Sampath that in view of a part payment having been made, after issue of statutory notice, the pending prosecution cannot be maintained, has no merit in it. Section 138(c) of the Act clearly shows that in the event of the drawer of such cheque failing to make the payment of the said amount of money, a prosecution can be maintained. 'Said amount of money' can only denote the amount for which the cheque or cheques were drawn and cannot relate to a part of it. If this argument were to be accepted, the intended utility of this provision would stand defeated. The second ground shall stand rejected : In any event, since the petitioner is bound to succeed on the first ground, Criminal Original Petition No. 8731 of 1992 is allowed. All further proceedings in C. C. No.

9123 of 1991, on the file of the Fifth Metropolitan Magistrate, Egmore, Madras-8, shall stand quashed.

46. Criminal Original Petition No. 677 of 1992 : The impugned complaint has been correctly filed by the payee, Lokaraj represented by his power of attorney, C. Balasundaram. A true copy of the power of attorney stood appended to the complaint at the time when the learned Magistrate ventured to take cognizance. The instant complaint can certainly be maintained under section 142(a) of the Act.

47. The next contention urged by Mr. K. Sridhar, on the clumsiness of the dates, which appear patently altered, to base a fervent plea, to quash the pending prosecution, cannot be upheld. A mere look at the documents available in the record received from the lower court shows alterations in a few places in respect of the date. It is equally amazing that a complaint signed on October 21, 1991, bears the court seal dated September 21, 1991. It may be a mistake or an act deliberate. The correction in the dates as well as this controversy, on date seal and the dating, can be only resolved after evidence is brought on record. Only on the basis of such evidence, it may have to be decided if the pending prosecution was barred by limitation even at its initiation. This mixed question of fact and law cannot be decided in the exercise of inherent powers. The second ground is also rejected. Criminal Original Petition No. 677 of 1992 which has no merit, shall stand dismissed.

48. Criminal Original Petition No. 5770 of 1992 : In view of the answer to the main question in this batch of original petitions, it has to be necessarily held that the complaint was validly filed by Eastern Cotton Traders, through its power agent, Kailash Prasad Agarwal. A xerox copy of the power of attorney was also available before the learned Magistrate, at the time of taking cognizance. On that ground the petitioner cannot succeed.

49. The second ground, that there is patent violation of the provisions under section 219 of the Code of Criminal Procedure, in that more than three transactions within a year form part of this prosecution, will have to be upheld. On that ground, the impugned prosecution cannot be quashed. However, the respondent will have to choose on which of these five cheques he would have the

prosecution maintained. That shall be stated before the concerned magistrate. Subject to this limited observation, on the second ground, this petition shall stand dismissed.

50. Criminal Original Petition No. 13963 of 1991 : In view of my holding that a power of attorney agent can competently initiate a prosecution under section 142(a) of the Act, this petition will have to be necessarily dismissed. The contention of the petitioners' counsel that under section 9 of the Act, holder in due course meant, any person who for consideration had become the possessor of the cheque, does not prima facie arise in this case. On behalf of the payee, the power of attorney agent has instituted the complaint. Even in the event of a power of attorney agent, of the holder in due course initiating a prosecution, the question of 'consideration' will be one of fact which will have to be gone into during the course of trial and that again cannot be a valid ground to prevent even at the threshold cognizance being taken of the complaint. A copy of the power of attorney was available before the magistrate at the time he took cognizance. I am unable to agree that an individual cannot execute a power of attorney in favour of another individual for the purpose of section 142(a) of the Act. This petition, which has no merit, shall stand dismissed.

51. The net result is Criminal Original Petition No. 8731 of 1992 is allowed, while Criminal Original Petition No. 677 of 1992 and Criminal Original Petition No. 13963 of 1991 are dismissed. Criminal Original Petition No. 5770 of 1992 is dismissed, subject to observations.

52. I place on record the immense assistance rendered by Mr. B. Sriramulu, learned public prosecutor.