



GAHC010255772022



2025:GAU-AS:16578

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1263/2022

M/S AMPROLISA CONSTRUCTION AND MARKETING PVT LTD
REP. BY SRI PROMOD SINGHA, ONE OF THE DIRECTOR OF THE COMPANY,
REGD. OFFICE, AMELYA BHAWAN, P.B. ROAD, REHABARI, GUWAHATI-
781008, ADDRESS FOR COMMUNICATION- CHANDAS TOWAR 2ND FLOOR,
HARIGAON ROAD, DISPUR, GUWAHATI-781006

VERSUS

1. GUPTA HARDWARE PRIVATE LIMITED AND ANR
REP. BY SRI MANAB LAHKAR, MARKETING MANAGER, DR. RP. ROAD,
DISPUR, GUWAHATI, DIST. KAMRUP (METRO), PIN-781006

2:THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for the Petitioner : MR. K BHATTACHARJEE, MS. A BARMAN,MS B
TALUKDAR,MR. M SAIKIA

Advocate for the Respondent : PP, ASSAM, M J HAZARIKA (R-1),MS P GUPTA (R-1),MR. C S
RAY (r-1)

:::BEFORE:::

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Advocates for the petitioner : Mr. K. Bhattacharjee, Sr. Advocate.

Mr. A. Barman, Advocate.

Advocates for the respondents :Ms. P. Gupa for R-1.

M.J. Hazarika for R-2.

Date on which judgment is reserved : 04.11.2025
Date of pronouncement of judgment : **03.12.2025.**
Whether the pronouncement is of the : No.
operative part of the judgment ?
Whether the full judgment has been : Yes
pronounced?

JUDGMENT & ORDER (CAV)

Heard Mr. K. Bhattacharjee, learned Senior Counsel assisted by Ms. A. Barman, learned counsel for the petitioner. Also heard Ms. P. Gupta, learned counsel for respondent No. 1 and Mr. M.J. Hazarika, learned Additional Public Prosecutor, Assam for the State.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the complaint as well as the proceeding vide C.R. Case No. 1106/2015 under Section 138 of Negotiable Instrument Act, 1881, presently pending before the learned Judicial Magistrate 1st Class, Kamrup (Metro), at Guwahati, read with Section 401 of Cr.PC.

3. One Manab Lahkar representing himself as Marketing Manager of the respondent Company M/S Gupta Hardware Pvt. Ltd. filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (*hereinafter referred to as "NI Act"*) before the Chief Judicial Magistrate, Kamrup (Metro) alleging dishonour of a cheque issued by the petitioner company. The case was made over to the learned Judicial Magistrate, Munsiff No. 4, Kamrup (Metro) and the following order was passed on 26.08.2015 which is as follows:-

"The complainant has filed their evidence-on-affidavit along with original document with copies and the original documents are returned to the complainant. The evidence on affidavit and photocopies of the original documents are kept with C.R.

From the perusal of the same I have found sufficient grounds for proceeding U/S 138 N.L. Act against the accused.

Issue summons to the accused.

Complainant shall take steps. The summons shall carry copy of the complaint petition along with copies of documents which are part of complaint as per sec 204(3) of the Code of Criminal Procedure, 1973.

Fixing 16.10.2015 for Service Report/Appeaerance/O.E."

4. After completion of prosecution evidence and closure of defence evidence, the complainant submitted a petition No. 2369 dated 18.07.2019 praying for adducing additional evidence of PW-1 and the accused submitted written objection to the said petition and after hearing both the parties, the learned

Trial Court by its order dated 07.12.2019 allowed the prayer of the petitioner permitting the PW-1 to introduce a Board Resolution as well as the Power of Attorney by way of re-examination of PW-1 by invoking its powers under Section 311 Cr.PC which empowers the Court to re-examine any witness who has already been discharged after cross-examination and holding that the defence will not be prejudiced as it shall get due opportunity to cross-examine PW-1 in the event of his re-examination. Subsequently, on 30.07.2022, the complainant furnished the additional evidence on affidavit of PW-1. Thereafter, the petitioner has approached this Court by way of the instant application under Section 482 Cr.PC when the matter was pending for cross-examination of PW-1.

5. I have heard learned counsels for the parties. I have also perused the material available on record.

6. Mr. Bhattacharjee, Learned counsel for the petitioner has at the outset drawn the attention of the Court to Annexure-5 which is a General Power of Attorney executed by the Director of the complainant company which may be reproduced below (Typed copy) for the sake of convenience.

"GENERAL POWER OF ATTORNEY

THIS POWER OF ATTORNEY is made on this 15th day of March, 2002 by Shri Rajendra Kumar Gupta son of Late Ram Kumar Gupta, Director of M/S GUPTA HARDWARE PRIVATE LTD. Ganeshguri, Guwahati, in the District of Kamrup, Assam, do hereby appoint Shri Manab Lahkar son of Sri Gopal Lahkar, Marketing Manager M/S GUPTA HARDWARE PRIVATE LTD. Ganeshguri, Guwahati in the District of Kamrup, Assam, as my true and lawful attorney for me, in my name and on my behalf to do and execute

and perform or cause to be done, executed and performed all any of the following acts, deeds and things.”

7. It is submitted by Mr. Bhattacharjee, learned counsel that it is apparent from the language of the aforesaid Power of Attorney that it was executed in the personal capacity of the executant, i.e. Rajendra Kumar Gupta, as the words “*as my true and lawful attorney for me, in my name and on my behalf*”, would clearly indicate. Secondly, it is submitted that there is no resolution of the Board of Directors authorizing the person who has instituted the complaint, i.e. **Manab Lahkar**, to lodge the said complaint, and thereby the requirement of Section 291 of the Companies Act has clearly been violated.

8. The next limb of argument advanced by learned counsel for the petitioner is that there is no reflection in the order dated 26.08.2025 taking cognizance of the case regarding any satisfaction drawn by the learned Magistrate regarding the authorization aspect of the matter.

9. In other words, the learned Magistrate has failed to examine whether the person who has instituted the complaint is duly authorized to do so, before taking cognizance of the matter. Continuing his arguments, Mr. Bhattacharjee next submitted that the Order dated 07.12.2019 whereby the complainant was allowed to adduce additional evidence in the form of a resolution of the Board of Directors and a General Power of Attorney, both of which were created after the institution of the case, was wholly illegal and amounts to granting an opportunity to the prosecution to fill up the lacunae which is impermissible in

law.

In support of his aforesaid submissions, learned counsel for the petitioner has relied upon the decision of the Supreme Court in ***A.C. Narayanan vs. State of Maharashtra and another*** reported in ***2015 (1) Bankmann SC 92***.

10. In the aforesaid case, it has been reflected at paragraphs 17, 18 and 19, upon which reliance has been placed as follows:-

"17. From the bare perusal of the said complaint, it can be seen that except mentioning in the cause title there is no mention of, or a reference to the Power of Attorney in the body of the said complaint nor was it exhibited as part of the said complaint. Further, in the list of evidence there is just a mere mention of the words at serial no.6 viz. "Power of Attorney". However there is no date or any other particulars of the Power of Attorney mentioned in the complaint. Even in the verification statement made by the respondent no.2, there is not even a whisper that she is filing the complaint as the Power of Attorney holder of the complainant. Even the order of issue of process dated 20th February, 1998 does not mention that the Magistrate had perused any Power of Attorney for issuing process.

18. The appellant has stated that his Advocate conducted search and inspection of the papers and proceedings of the criminal complaint and found that no Power of Attorney was found to be a part of that record. This has not been disputed by the respondents. In that view of the matter and in light of decision of the larger Bench, as referred above, we hold that the Magistrate wrongly took cognizance in the matter and the Court below erred in putting the onus on the appellant rather than the complainant. The aforesaid fact has also been overlooked by the High Court while passing the

impugned judgment dated 12th August, 2005.

19. In the result, the impugned judgment dated 12th August, 2005 passed by the High Court of Judicature at Bombay and the order dated 29th November, 2000 passed by the Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai are set aside and the proceedings in question against the appellant are quashed."

11. In ***Ashok Bampto Pagui vs. Agencia Real Canacona Pvt. Ltd. and Another***, reported in ***2007 STPL 11975 Bombay***, the Bombay High Court in its Judgment at paragraph 21 has held as follows:-

"21. A Director as an individual Director, has no power to act on behalf of the company. He is only one of a body of Directors called the Board of Directors and alone he has no power except such as may be delegated to him by the Board of Directors or given to him by the articles of association of a company."

12. In another decision cited on behalf of the petitioner, i.e. ***Debson Pumps Pvt. Ltd. Vs. Gauhati Municipal Corporation*** reported in ***2018 Supreme (Gau) 1237***, the Gauhati High Court has referred to the decision in ***Sampath Shipping Company Pvt. Ltd. Vs. Dolly George*** reported in ***2002(9) SCC 445*** and ***Dell and Carrington Investment Private P. Ltd. vs. P. K. Prathapan*** reported in ***2005 (1) SCC 212***. Referring to the aforesaid decisions, our High Court has held as follows:-

"19. The decision in Samrat Shipping Co. Pvt. Ltd. (supra) was in the context of the Negotiable Instruments Act, 1881 (for short, "1881 Act"), wherein dismissal of the complaint under Section 138 at the threshold on the premise that the individual had

not produced certified copy of the resolution of the Board of Directors was held to be too hasty an action. In National Small Industries Corporation Limited (supra), the Supreme Court, referring to section 291(1) of the Companies Act, 1956, which is pari materia with section 179 of the Companies Act, 2013, had observed that a company, though a legal entity, can act only through its Board of Directors and that the settled position is that a Managing Director is, prima facie, in charge of and responsible for the company's business and affairs and can be prosecuted for functions by the company and, so far as the other Directors are concerned, they can be prosecuted only if they were in charge of and responsible for the conduct of the business of the company. The decision in Gopalakrishna Trading Co. (supra) as well as in Shakthi Concrete Industries Ltd. (supra) were also in the context of a complaint filed by the company under Section 138 of the 1881 Act.

20. In Dale & Carrington Inv. (P) Ltd. (supra), the Supreme Court had held that a company is a juristic person and it acts through its Directors who are collectively referred to as Board of Directors and an individual Director has no power to act on behalf of the company of which he is a Director unless, by some resolution of the Board of Directors of the company, specific power is given to him/her. The powers of Directors are delineated in the Memorandum of Association of the company and the Directors are bound to act accordingly. As agents of the company, they must act within the scope of their authority and must disclose that they are acting on behalf of the company. In the instant case, the Memorandum of Association is not placed by the petitioner."

13. In ***Entertainment Society of Goa Vs. Ritza Wine Private Ltd. & Others*** reported in **2011 0 Supreme (Bom) 13**, the Bombay High Court has held that a complaint under Section 142 of the Act can be filed either by the payee or holder in due course.

14. In ***George Joseph & Another Vs. HMT (International) Ltd.***, reported in ***2014 Supreme (Kar) 609***, the Karnataka High Court has held as follows:-

"However, the fact that the law requires a company or a corporate body to carry on its affairs in a particular manner and the question whether the proceedings have been instituted and is prosecuted in conformity with such requirements, is a question of law that should be satisfied as a matter of course and ought not to depend upon whether an objection has been raised or a 'plea' taken, if you will. The infirmity if noticed should be cured. It certainly cannot be ignored as being a mere technicality that would not vitiate the proceedings.

Section 291 of the Companies Act, 1956, did embody the principle that subject to the specific exceptions mentioned, the directors of the company, as its governing body, are entitled to exercise all the powers of the company. In the instant case on hand, it is noticed by the lower appellate court that the Articles of Association of the company, did confer the power on the Directors to sue or defend any proceedings on behalf of the company. A delegation of such power can only be by a resolution of the Board of Directors. Hence, a letter of authorization or a Power of Attorney executed by the Chairman or other officer of the company, without a delegation of the power to institute such proceedings having emanated from the Board of Directors, would invalidate any proceedings brought without the necessary authority. This lack of authority could have been supplied even before the appellate court when the issue arose for consideration, as has been observed by the apex court in MMTC's case as well in the case of United Bank of India v. Naresh Kumar (1996) 6 SCC 660. In other words even on a presumption, that in the face of a letter of authorization and a power of attorney having been executed, authorizing the concerned person to file and prosecute the complaint, that there was an implied authorization by the Board, it ought to have been formally ratified, when the same was questioned before the courts

below

This court has consistently held that for any person to represent and tender evidence in a court of law on behalf of a company, ought to be authorized under the Articles of Association of the company or by a separate resolution by the Board of Directors."

15. In another decision cited on behalf of the petitioner, i.e. ***State Bank of Travancore Vs. M/S Kingston Computers (I) Private Ltd.***, reported in ***2011 STPL 10682 SC***, the Supreme Court has held that the judgment under challenge is liable to set aside because the respondent had not produced any evidence to prove that the complainant was appointed as a Director of the company and that a resolution was passed by the Board of Directors of the company to file the suit against the appellant and authorized the said person to do so and that the letter of authority issued by a person who described himself as the Chief Executive Officer of the company was nothing but a scrap of paper because no resolution was passed by the Board of Directors delegating its powers to Sri Raj K. Shukla to authorise another person to file the suit on behalf of the company.

16. Countering the aforesaid arguments, Ms. P. Gupta, learned counsel for the respondent has pointed out that in the actual General Power of Attorney submitted at the time of filing of the complaint, it is mentioned at paragraph 1 that the complainant is authorized to work, manage, control and supervise all the transactions relating with the marketing of the firm and at paragraph 2 to collect, receive and realise all amounts or amount due and payable by the party and to give and execute all necessary receipts. It is submitted that from the above two paragraphs, it is apparent that the complainant **Manab Lahkar**

was given a power of attorney to carry out the aforesaid works of the firm and not of the individual Director who executed the same. However, by way of abundant caution, the company had rectified the error by passing a resolution of the Board of Directors authorizing the said Manab Lohkaur to file the complaint and also executed the General Power of Attorney pursuant thereto in favour of the said Manab Lohkaur, pursuant to which appropriate application was filed before the learned Magistrate seeking to adduce additional evidence in the form of the aforesaid two documents which was rightly allowed by the learned Magistrate and the same cannot be regarded as merely filling up of lacunae in the prosecution case.

17. It is further submitted that the defect, if any, in instituting the complaint was a curable one which has been duly done by the complainant company.

18. In support of the aforesaid contentions, learned counsel for the respondent has relied upon ***Bhupesh Rathod vs. Dayashankar Prasad Chaurasia & Another*** reported in ***(2022) 2 SCC 355***, wherein it has been held by the Supreme Court at paragraph 19 as follows:-

"19. In the conspectus of the aforesaid principles we have to deal with the plea of the respondent that the complaint was not filed by the competent complainant as it is the case that the loan was advanced by the Company. As to what would be the governing principles in respect of a corporate entity which seeks to file the complaint, an elucidation can be found in the judgment of this Court in Associated Cement Co. Ltd. v. Keshvanand. If a complaint was made in the name of the Company, it is necessary that a natural person represents such juristic person in the court and the court looks upon the natural person for all practical purposes. It is in this context that



observations were made that the body corporate is a de jure complainant while the human being is a de facto complainant to represent the former in the court proceedings. Thus, no Magistrate could insist that the particular person whose statement was taken on oath alone can continue to represent the Company till the end of the proceedings. Not only that, even if there was initially no authority the Company can at any stage rectify that defect by sending a competent person. The aforesaid judgment was also taken note of in a subsequent judgment of this Court in M.M.T.C. Ltd. v. Medchi Chemicals & Pharma (P) Ltd."

19. The next decision cited by learned counsel for the respondent is ***TRL Krosaki Refractories Ltd. Vs. SMS Asia Private Ltd. & Anr***, reported in ***(2022) 7 SCC 612***, wherein at paragraph 25, it has been held as follows:-

"25. In that view, the position that would emerge is that when a company the payee of the cheque based on which a complaint is filed under Section 138 of the NI Act, the complainant necessarily should be the company which would be represented by an employee who is authorised. Prima facie, in such a situation the indication in the complaint and the sworn statement (either orally or by affidavit) to the effect that the complainant (Company) is represented by an authorised person who has knowledge, would be sufficient. The employment of the terms "specific assertion as to the knowledge of the power-of-attorney holder" and such assertion about knowledge should be "said explicitly" as stated in A.C. Narayanan cannot be understood to mean that the assertion should be in any particular manner, much less only in the manner understood by the accused in the case. All that is necessary is to demonstrate before the learned Magistrate that the complaint filed is in the name of the "payee" and if the person who is prosecuting the complaint is different from the payee, the authorisation therefore and that the contents of the complaint are within his knowledge. When, the complainant/payee is a company, an authorised employee can represent the company. Such averment and prima facie material is sufficient for the learned Magistrate to take cognizance and issue process. If at all, there is any serious dispute with regard to the

person prosecuting the complaint not being authorised or if it is to be demonstrated that the person who filed the complaint has no knowledge of the transaction and, as such that person could not have instituted and prosecuted the complaint, it would be open for the accused to dispute the position and establish the same during the course of the trial. As noted in Samrat Shipping Co., dismissal of a complaint at the threshold by the Magistrate on the question of authorisation, would not be justified. Similarly, we are of the view that in such circumstances entertaining a petition under Section 482 to quash the order taking cognizance by the Magistrate would be unjustified when the issue of proper authorisation and knowledge can only be an issue for trial."

20. In ***Standard Chartered Bank Vs. Ravi Bhandari*** reported in **2002 SCC Online Del 1583**, it has been held by the Delhi High Court that the offences under the NI Act, the only criteria prescribed by Section 142 is that the complaint must be instituted by the payee or holder in due course.

21. In ***MMTC Ltd. Vs. Medchl Chemicals and Pharma (P) Lt. & Another*** reported in **(2002) 1 SCC 234**, the Supreme Court held that the initial absence of a board resolution or authorization for filing a complaint under Section 138 NI Act is a curable defect and not a ground to quash the proceedings and that a company acts through natural persons and subsequent ratification validates the complaint.

22. In ***Samrat Shipping Co. Pvt. Ltd. Vs. Dolly George*** reported in **(2002) 9 SCC 455**, the Supreme Court has held that the dismissal of a complaint at the threshold for lack of authorization is too hasty and that the issue should be decided during the trial and absence of authorization can be

cured later.

23. In *United Bank of India Vs. Naresh Kumar* reported in **(1996) 6 SCC 660**, cited by the respondent, it has been held that a suit or complaint filed by a company without initial authorization can be subsequently ratified by the Board and that Section 196 of the Indian Contract Act, 1872, allows ratification of acts done without authority.

24. Lastly, learned counsel for the respondent has relied upon *State of Haryana Vs. Bhajan Lal and Others* reported in **1992 Supp (1) SCC 335**, wherein the Supreme Court has held that the High Court should not quash proceedings where factual disputes or matters requiring evidence exist.

25. I have given my anxious considerations to the arguments advanced on behalf of the contesting parties and the authorities cited.

26. Learned counsel for the petitioner has challenged the validity of the power of attorney which was submitted by the complainant at the time of instituting the complaint. In course of arguments, learned counsel for the respondent has virtually conceded that the said power of attorney suffered from infirmities, but the same have been subsequently cured by the resolution of the Board of Directors and fresh power of attorney. Therefore, the only question to be decided is whether the initial defect at the time of instituting the complaint was a curable one and whether allowing the complainant to adduce additional evidence in order to bring on record the subsequent resolution of the Board of Directors and fresh General Power of Attorney amounted to filling up

lacunae in the prosecution case.

27. In ***A.C. Narayanan*** (Supra) cited on behalf of the petitioner, the Court was not considering the issue at hand in the instant case, i.e. whether the initial defect in lodging of the complaint could be subsequently cured and therefore, this decision does not help the petitioner.

28. In ***Ashok Bampto Pagui*** (Supra), what the Bombay High Court has said that the individual Director has no power to sue on behalf of the company unless authorized by the Board of Directors or by the articles of association. There is no cavil with the aforesaid proposition.

29. The decision in ***Samrat Shipping Co. Pvt. Ltd.*** (Supra) rather holds that dismissal of the complaint under Section 138 at the threshold on the premise that the individual had not produced the certified copy of the resolution of the Board of Directors to be too hasty an action. Therefore, this decision goes against the petitioner.

30. In ***Entertainment Society of Goa (Supra)***, the Bombay High Court has held that a complaint under Section 142 of the Act can be filed either by the payee or holder in due course. In the present case, the complainant company is the payee of the cheque and as held in the decision cited above, the complaint was instituted by one of its employees who though lacking proper authorization in the manner envisaged by the Companies Act, nevertheless was a natural person as well as an employee of the company and as held in ***Bhupesh Rathod*** (Supra), when the complaint was made in the name of the company, it is necessary that a natural person represents such a juristic person in the court

and the court looks upon the natural person for all practical purposes. In other words, the payee company was being represented by one of its employees at the time of institution of the suit and the said person did not institute the complaint in his personal capacity and therefore, it is the company that has to be considered as the payee even at the time of institution of the suit.

31. Further, in ***George Joseph & Another*** (Supra), it has been clearly held by the Apex Court that the lack of authority could have been supplied even before the Appellate Court when the issue arose for consideration, as has been observed by the Apex Court in MMTC's case as well as in the case of ***United Bank of India*** (Supra).

32. In ***State Bank of Travancore*** (Supra) cited on behalf of the petitioner, the question of subsequent ratification and curable nature of the defect was not under consideration and the same therefore does not help the petitioner.

33. In ***Bhupesh Rathod*** (Supra) cited by learned counsel for the respondent, it has been clearly held by the Apex Court that even if there was initially no authority, the company can at any stage rectify the defect by sending a competent person.

34. This also indicates that any initial defect at the time of institution of the complaint, whether with regard to the natural person instituting the complaint or with regard to the presence or absence of proper authority is a curable defect.

35. In ***TRL Krosaki Refractories Ltd.*** (Supra), the Apex Court has held that in cases under Section 138 of the NI Act, the complainant necessarily should be

the company which should be represented by an employee who is authorized and prima facie in such a situation, the indication in the complaint and the sworn statement to the effect that the complainant company is represented by an authorized person who has knowledge would be sufficient.

36. It was further held that all that is necessary is to demonstrate before the learned Magistrate that the complaint filed is in the name of the payee and if the person who is prosecuting the complaint is different from the payee, the authorization therefore and that the contents of the complaint are within his knowledge. Such averment and prima facie material is sufficient for the learned Magistrate to take cognizance and issue process.

37. On perusal of the record, it appears that is what has precisely happened in the present case and therefore, the Magistrate cannot be faulted for taking cognizance on the basis of the averments of the petitioner and complainant.

38. The Apex Court further held that if at all there is any serious dispute with regard to the person prosecuting the complaint not being authorized or if it is to be demonstrated that the person who filed the complaint has no knowledge of the transaction, it would be open for the accused to dispute the position and establish the same during the course of the trial and the Magistrate would not be justified in dismissing the complaint at the threshold on the question of authorization. It was further held that in such circumstances, entertaining a petition under Section 482 to quash the order taking cognizance by the Magistrate would be unjustified when the issue of proper authorization can only be an issue for trial. Further, it has been clearly held in MMTC Limited that the



initial absence of a Board Resolution or authorization for filing a complaint under Section 138 N.I Act is a curable defect and not a ground to quash the proceedings and that a company acts through natural persons and subsequent ratification validates the complaint. Similar is the decision of the Apex Court in ***United Bank of India*** (Supra).

39. From the decisions discussed above, it is abundantly clear that any initial defect as regards authorization at the time of initiation of the complaint is a curable defect which can be subsequently cured during the course of the trial or even at the appellate stage as held by the Supreme Court in ***George Joseph & Another*** (Supra).

40. In view of the above, I do not find any infirmity in the impugned order of the Magistrate permitting the complainant to adduce additional evidence to bring on record the subsequent resolution of the Board of Directors and General Power of Attorney authorizing the complainant to institute the complaint.

41. Accordingly, the instant criminal petition is found to be devoid of merit and is dismissed accordingly.

JUDGE

Comparing Assistant