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Power of Attorney Holders and Cheque Dishonour Complaints: Gujarat High Court Settles the Scope

In dismissing a quashing petition under Section 528 of the Bharatiya Nagrik Suraksha Sanhita, 2023, the Gujarat High Court has clarified the conditions under which a power of attorney holder may validly maintain a complaint under Section 138 of the Negotiable Instruments Act, 1881. Background and Factual Matrix The dispute arose from a commercial transaction [...]

AUTHOR Shrishail Kittad, Aditya Yuvaraj

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Table of contents

- [Background and Factual Matrix](#)
- [The Petitioners' Contentions](#)
- [The Respondent's Position](#)
- [The Court's Reasoning and Holding](#)
- [Practical Implications for Stakeholders](#)
- [Concluding Observations](#)

Background and Factual Matrix

The dispute arose from a commercial transaction between Jalaram Jari Industries, Surat (the complainant firm) and United Petrofer Limited along with its directors (the accused). According to the complainant's case, the accused induced the firm to invest Rs. 50,00,000 on 26 June 2023, against which goods worth approximately Rs. 21,23,115 were delivered. A further Rs. 50,00,000 was paid on 28 June 2023, against which no delivery was made. A credit note of Rs. 56,616 was subsequently issued, and the accused eventually provided eight cheques totalling Rs. 74,64,634 in favour of the firm. All eight were returned dishonoured on 8 December 2023.

A statutory notice under Section 138 of the Negotiable Instruments Act, 1881 (the NI Act) was served on 18 December 2023. The accused partially remedied the default by paying Rs. 11,64,634, leaving Rs. 63,00,000 unpaid. A private complaint was filed before the 16th Additional Chief Judicial Magistrate, Surat on 12 January 2024 by Mr. Amit Nagindas Kapadia, described therein as the power of attorney (PoA) holder of Jalaram Jari Industries.

The accused filed the present petition seeking to quash the complaint on two primary grounds: first, that the PoA holder lacked valid authority to maintain the complaint, the original proprietor of the firm having passed away; and second, that the trial court had failed to hear the accused before taking cognizance, in purported contravention of Section 223(1) of the BNSS.

The Petitioners' Contentions

Counsel for the petitioners, Mr. Kunal S. Shah, argued that the GST certificate of Jalaram Jari Industries disclosed a sole proprietor, Mr. Sanjaykumar Dhansukhlal Jariwala, and that no power of attorney had been executed by him in favour of Mr. Amit Nagindas Kapadia. Since Section 142 of the NI Act confines cognizance to complaints by the payee or holder in due course (or an authorised representative), the complaint was, the petitioners submitted, manifestly incompetent.

On the procedural ground, the petitioners relied on Section 223(1) of the BNSS, contending that the legislature had introduced a new and mandatory requirement that the accused be heard before cognizance is taken, a safeguard absent in the repealed Code of Criminal Procedure, 1973.

The Respondent's Position

Senior Counsel Mr. Deven Parikh, appearing for the complainant, offered a fuller factual picture. The original proprietor, Mr. Sanjaykumar Jariwala, had executed a general power of attorney in favour of Mr. Amit Nagindas Kapadia on 6 November 2015, prior to his death on 11 November 2023. He had also executed a will transferring the assets and business of the firm to the family of Mr. Nagindas Kapadia. The new principals thereafter executed a fresh general power of attorney in Mr. Amit Nagindas Kapadia's favour on 16 December 2023, on the strength of which the complaint was filed.

On the procedural argument, Senior Counsel submitted that the NI Act is a complete code in itself and that Section 142 expressly sets out the exclusive procedure for taking cognizance of Section 138 offences. Being a general provision, Section 223(1) of the BNSS could not override the special procedure enacted under a special legislation.

The Court's Reasoning and Holding

“The power-of-attorney holder can initiate legal proceedings... he can maintain the complaint as a proprietary concern represented by the attorney holder under the Power of Attorney executed by the proprietor.”

Justice L.S. Pirzada dismissed the petition, finding no merit in either ground advanced.

On the competence of the PoA holder, the Court reaffirmed the settled position emerging from the Supreme Court's decisions in *M/s. Shankar Finance & Investments v. State of Andhra Pradesh* and *A.C. Narayanan*, as applied by this Court in *Vishal Kamlesh Parikh v. State of Gujarat*. The permissible modes of filing under or on behalf of a proprietary concern are: (i) by the proprietor personally, as sole proprietor; (ii) by the concern itself, represented by its proprietor; (iii) by the proprietor or concern, represented by a PoA holder under a power of attorney executed by the sole proprietor; and (iv) the concern by name, identifying its proprietor and the attorney holder. What is impermissible in each formulation is for the PoA holder to file in his own personal name as if he were the complainant.

The Court found that the complaint was styled “Amit Nagindas Kapadia, Power of Attorney holder of Jalaram Jari Industries,” with a copy of the power of attorney annexed. The filing fell squarely within permissible methods (iii) and (iv). Mr. Kapadia acted throughout as agent of the firm, not in a personal capacity.

On the procedural ground, the Court held that the NI Act constitutes a self-contained code for cheque dishonour offences. Section 142 specifies the conditions precedent for cognizance and, by virtue of its opening “notwithstanding” clause (originally directed at the CrPC and equally applicable to its successor, the BNSS), expressly displaces general criminal procedure. The magistrate was accordingly under no obligation to issue notice to or hear the accused before taking cognizance.

The Court further noted, as a practical consideration, that the trial was at an advanced stage: the accused's plea had been recorded, the complainant's examination-in-chief tendered, and cross-examination commenced. In these circumstances, the narrow threshold for quashing under Section 528 of the BNSS was not met. The defences available to the accused could properly be urged at trial, where the complainant was already in the witness box.

The Court also rejected the petitioners' request for a four-week stay to enable an approach to the Supreme Court, given that cross-examination was ongoing and delay would be prejudicial.

Practical Implications for Stakeholders

This judgment, though arising from a routine quashing petition, carries several implications for creditors, banks, and commercial litigants.

Proprietary businesses need not be confined to their proprietors in initiating NI Act proceedings. Complaints filed through a duly authorised PoA holder with the agency relationship disclosed on the face of the complaint will be competent. Businesses managed through representatives, estate executors, or successor-principals acting under testamentary instruments should ensure that the authority chain is documented and annexed at the time of filing. Deficiency in documentation will invite a competency challenge.

The ruling forecloses an argument that practitioners had begun to raise following the coming into force of the BNSS in July 2024: that Section 223(1), requiring the accused to be heard before cognizance, had altered the landscape for NI Act prosecutions. The Court's analysis is sound. The “notwithstanding” clause in Section 142 of the NI Act was inserted precisely to create a special regime, and the transition from CrPC to BNSS does not diminish its effect. Drawer-accused should not expect an opportunity to contest cognizance before it is taken.

Finally, the case is a reminder that the probability of obtaining quashing relief on preliminary or procedural grounds diminishes sharply once the evidentiary phase of a trial is underway. Petitions of this character are best filed at the earliest opportunity, well before trial is engaged.

Concluding Observations

The Gujarat High Court's decision in *United Petrofer Ltd. v. State of Gujarat* consolidates rather than extends existing jurisprudence. Its significance lies in applying settled Supreme Court precedent to the post-BNSS procedural landscape and in firmly rejecting the proposition that the new code's general provisions have diluted the special cognizance regime under the Negotiable Instruments Act. For creditors, banks, and insolvency practitioners, the message is clear: the efficacy of NI Act enforcement as a recovery tool remains unimpaired under the new statutory framework.

Source: R/Special Criminal Application No. 6911 of 2025

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