

SRI. H.N. NAGARAJ v. SRI. SURESH LAL HIRA, (2023-1)209 PLRIJ 020 (Kar.), 2023 PLRonline 401600

HIGH COURT OF KARNATAKA AT BENGALURU

Before: Justice Suraj Govindaraj.

SRI. H.N. NAGARAJ v. SRI. SURESH LAL HIRA

Criminal Petition No. 8257 OF 2019 and others

Negotiable Instruments Act, 1881, [Section 138](#) - Complant through power of attorney - During the course of cross-examination if it is established that the power of attorney holder has no knowledge regarding the transaction, then the complaint itself would fail and it is the risk which has been taken by the complainant by appointing power of attorney holder - The power of attorney holder being a witness to the transaction as an agent is a matter which has been averred in the complaint but veracity of the same would always be subject to cross-examination in the proceedings - In the event of the accused being able to establish that the power of attorney does not know the transactions and/or that the deposition given is not correct or false, the accused could always succeed in the said matter - At the stage of filing of an affidavit or recordal of sworn statement it cannot be said or decided as to whether the power of attorney is aware of or not of the transactions.

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Negotiable Instruments Act, 1881, Section 138 - Proprietary concern - In a proceeding under Section 138 of N.I.Act, the arraying of a proprietor as an accused or a proprietary concern represented by the proprietor would be sufficient compliance with the requirements under Section 138 of N.I.Act, the proprietor and the proprietary concern is not required to be separately arrayed as a party accused.

Held, Insofar as a proprietary concern is concerned, as the name indicates there can only be one proprietor and it is the said proprietor who would be incharge of the affairs of the proprietary concern. Thus, it is not required for any pleading to be made as regards who is the person in charge of a proprietary concern when there is only one proprietor. *Sardar Bupender Singh vs. M/s.Green Feeds Through Its Partner Vipin Kumar* (Panjab and Haryana) dated 26.08.2022, disagreed.

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