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Reserved on : 11.02.2026
Pronounced on : 13.03.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.804 OF 2026

BETWEEN:

1 . SRI VIMAL JAIN KATARIA
S/O SRI MANOHAR LAL JAIN,
AGED ABOUT 47 YEARS,
R/AT NO.647, FLAT NO.504,
LOPULENCE, 16TH CROSS,
19TH MAIN, IDEAL HOMES,
IDEAL HOMES CO-OPERATIVE
SOCIETY LAYOUT,
RAJARAJESHWARINAGAR,
BENGALURU – 560 098
PARTNER AT M/S VAISHNODEVI
FAIRRMONT ESTATE LLP

2 . SMT. VIMAL KUMAR MADHU JAIN
W/O SRI VIMAL JAIN KATARIA,
AGED ABOUT 40 YEARS,
R/AT NO.647, FLAT NO.504,
LOPULENCE, 16TH CROSS,
19TH MAIN, IDEAL HOMES,
IDEAL HOMES
CO-OPERATIVE SOCIETY LAYOUT,
RAJARAJESHWARINAGAR,
BENGALURU – 560 098
PARTNER AT M/S VAISHNODEVI

FAIRRMONT ESTATE LLP.

3 . M/S.VAISHNODEVI FAIRRMONT ESTATE LLP,
A REGISTERED LIMITED LIABILITY
PARTNERSHIP FIRM,
NO.99/C, 3RD FLOOR,
IDEAL HOMES TOWNSHIP,
VAISHNODEVI TRINITY,
12TH CROSS, KENCHENAHALLI,
KENGERI, BENGALURU – 560 098
REPRESENTED BY ITS PARTNER
SRI VIMAL JAIN KATARIA.

... PETITIONERS

(BY SRI D.R.RAVISHANKAR, SR.ADVOCATE A/W
SRI H.V.SHYAME GOWDA, ADVOCATE)

AND:

SMT. R. G. MANJULA
W/O LATE SRI.V.SIDDAPPA,
AGED ABOUT 66 YEARS,
R/AT NO. 1095, 35TH D CROSS,
26TH MAIN, 4TH T BLOCK,
JAYANAGAR, BENGALURU – 560 041.
REPRESENTED BY SPA HOLDER
SRI S.MANOHAR.

... RESPONDENT

(BY SRI BIPIN HEGDE, ADVOCATE A/W
SRI VINAYAKA S.PANDIT, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF B.N.S.S., 2023, PRAYING TO A. QUASH THE ORDER DATED 31.10.2025 IN C.C.NO.44968/2025 PASSED BY THE COURT OF THE

XXII ADDL CJM BENGALURU CITY, WHEREIN THE COGNIZANCE HAS BEEN TAKEN AGAINST THE PETITIONERS HEREIN BY ISSUING SUMMONS FOR THE OFFENCE P/U/S 138 OF NI ACT AND AS PER ANNEXURE B; B. TO QUASH THE COMPLAINT AND ENTIRE PROCEEDINGS IN C.C.NO.44968/2025 TITLED AS SMT.R.G.MANJULA Vs. M/S.VAISHNODEVI FAIRRMONT ESTATE LLP, PENDING ON THE FILE OF XXII ACMM, AT BENGALURU AS PER ANNEXURE A AND B; C. QUASH ALL CONSEQUENTIAL PROCEEDINGS ARISING THERE FROM AND ALLOW THIS CRIMINAL PETITION.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 11.02.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioners/accused 1, 2 and 3 are before the Court calling in question entire proceedings in C.C.No.44968 of 2025 registered for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as ‘the Act’ for short).

2. Heard Sri D.R. Ravishankar, learned senior counsel appearing for the petitioners and Sri Bipin Hegde, learned counsel appearing for the respondent.

3. Facts, in brief, germane are as follows: -

The 3rd petitioner-Company and the respondent enter into a transaction through a registered sale deed in respect of certain land situated in Heggadagere Village, Bidadi Hobli, Ramanagara Taluk and District and in furtherance of the said transaction, the 3rd petitioner issued four post dated cheques for ₹91,65,000/- being a portion of the entire sale consideration of ₹3,89,65,000/-. On 20-06-2025, the cheques that were presented for realization got dishonoured for want sufficient funds. On 17-07-2025, the respondent causes a legal notice and initiates proceedings under Section 138 of the Act. The respondent then, through her Special Power of Attorney holder files P.C.R.No.16785 of 2025 for the aforesaid amount of ₹91,65,000/-. The concerned Court takes cognizance of the offence and registers C.C.No.44968 of 2025. It appears that the respondent, on the same cause of action, in respect of the very same transaction, has filed a suit for recovery of money in O.S.No.5 of 2026 and the same is said to be pending consideration. Taking of cognizance and issuance of summons is what has driven the petitioners to this Court in the subject petition.

4. The learned senior counsel Sri D.R.Ravishankar appearing for the petitioners would vehemently contend that the complaint is preferred by a Special Power of Attorney Holder. There is not even a single line in the complaint that the Special Power of Attorney Holder is aware of the transaction between the parties. The learned senior counsel would further contend that the respondent has registered a civil suit on the same set of facts in O.S.No.5 of 2026 seeking refund of the amount and also initiated proceedings under the Act. He would seek quashment of the proceedings on the aforesaid two grounds, that in view of the Special Power of Attorney Holder not disclosing in the complaint that he is aware of entire facts, the complaint could not have been entertained and that a civil suit is pending between the parties on the same set of facts. He would seek to place reliance on the judgment of the Apex Court in the case of **A.C. NARAYANAN v. STATE OF MAHARASHTRA** –

(2014) 11 SCC 790 to buttress his submission that a power of attorney holder, unless he avers that he is completely aware of the facts, the complaint is not entertainable.

5. *Per contra*, the learned counsel Sri Bipin Hegde appearing for the respondent would vehemently refute the submissions in contending that the Special Power of Attorney Holder is the son of the respondent who has recorded his sworn statement. In the sworn statement, the Special Power of Attorney Holder narrates that he is aware of the facts, as he is the son of the complainant. The complainant not being in a position to prosecute the proceedings, she has given Special Power of Attorney to her son. The subject matter is a sale deed. The cheques are issued in furtherance of the sale deed. The son is also a party to the sale deed. A line that he is aware of the facts missing in the complaint cannot mean that the complaint itself is not maintainable. The learned counsel submits that filing a suit for recovery of money and criminal proceedings for prosecuting the petitioners for dishonor of cheques stand on a different footing. The two can go hand in hand.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts are not in dispute. The sheet anchor of the submission of the learned senior counsel for the petitioners is that the complainant is represented by a Special Power of Attorney Holder and that the complaint does not narrate that the Special Power of Attorney Holder is aware of the entire transaction. The transaction is a sale deed executed between three persons and the Company/the 3rd petitioner. The three persons are, the complainant and her two sons viz., S. Madhukar and S. Manohar. The parties to the sale deed are as follows:

> "THIS DEED OF ABSOLUTE SALE IS MADE AND EXECUTED ON THIRTEENTH DAY OF MARCH, TWO THOUSAND TWENTY-FIVE (13.03.2025) AT RAMANAGARA BY:
>
> 1) SMT. R.G. MANJULA, Aged about 66 years,
> W/o late V.Siddappa,
> Aadhaar No.898661596434
> PAN No.AIAPM8456E.
>
> 2) SRI S.MADHUKAR, Aged about 43 years,
> Son of late V.Siddappa,
> Aadhaar No.567695722627
> Represented by his mother and GPA holder
> Smt. R.G.Manjula, aged about 66 years,

W/o late V.Siddappa, Aadhaar No.898661596434
PAN No.IQOPS9511N.

3) SRI S.MANOHAR, Aged about 38 years,
S/o late V.Siddappa
Aadhaar No.405590923317
PAN No.CGJPM5909B

All are residing at No.1095, 35th 'D' Cross, 26th Main, 4th 'T' Block, Jayanagar, Bengaluru - 560041 hereinafter jointly referred to as the '**VENDORS**' (which expression shall unless repugnant to the subject or context mean and include their respective legal heirs; administrators, assignees, executors) of the **FIRST PART**;

AND

SMT. UMA H, Aged about 46 years,
Daughter of late H.M.Hanumaiah and wife of Nagaraja B.K residing at No.207/940/B,10th Cross, Bhuvaneshwari Nagar Ittimadu, BSK 3rd Stage, Bengaluru 560085, **Aadhaar No. 363263661309**, hereinafter referred to as the '**CONFIRMING PARTY**', (which expression shall unless repugnant to the subject or context mean and include her legal heirs, administrators, assignees, executors) of the **SECOND PART**;

IN FAVOUR OF:

M/s. VAISHNODEVIFAIRRMONT ESTATE LLP.,
A company incorporated under the Companies Act, 1956, having its registered office at No.99/C, 3rd Floor, Vaishnodevi Trinity, 12th Cross Road, Ideal Homes Township, Kenchenahalli, Bengaluru 560098, **PAN No.AAZFV6517A** duly represented by its Partner **SRI VIMAL JAIN (KATARIA),** aged about 47 years, Son of Sri Manohar Lal Jain, residing at No.647, Flat No.504, L'Opulence 16th Cross, 19th Main, Ideal Homes, Ideal Homes Cooperative Society Limited, Rajarajeshwarinagar, Bengaluru-560098, **Aadhaar No.869059220833**, Hereinafter referred to as the "**PURCHASER**" (which expression shall, unless repugnant to the meaning or context thereof, be deemed to be mean and include its Partners/Directors, Successors-in title, legal representatives and assigns) of the **THIRD PART**."

Cheques that are issued are dishonoured. The complainant, therefore, is before the concerned Court through the Special Power of Attorney holder. It is the admitted fact that the Special Power of Attorney holder does not aver in the plaint that he is aware of the transaction and in the absence of such averment is representing the complainant. The Special Power of Attorney holder of the complainant records sworn statement. After recording of sworn statement and production of documents thereon, the concerned Court, on being satisfied, passed the following order:

> "31-10-2025:
>
> **ORDER**
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> Perused the documents. Heard the Advocate for complainant. The records and the sworn statement discloses that, there is Prima facie material to proceed against the accused for the offence punishable under Section 138 of the NI Act. In view of the same, I proceed to pass the following:
>
> **ORDER**
>
> Register the case against the accused as C.C. in Register No.3 for the offence punishable under Section 138 of NI Act.
>
> Issue SS to accused by RPAD, Court and by Hand with assistance of concerned Police Station. If PF and postage paid. R/by 4-02-2026.
>
> Sd/-
> XXII ACMM, B'lore."

The issue now is, whether the averment of Special Power of Attorney holder in the complaint that he is aware of the transaction found wanting, it would vitiate the complaint itself. In the normal circumstances, if a stranger to the transaction files a complaint for offence punishable under Section 138 of the Act and there is no averment therein that he is aware of the transaction, the complaint cannot be entertained, as it stands completely covered by the judgment rendered by the Apex Court in **A.C. NARAYANAN** *supra*. But, there is a twist in the case at hand.

8. The Special Power of Attorney holder of the complainant is not a stranger. He is one of the signatories to the transaction. The transaction is the sale deed. If the Special Power of Attorney holder is also a signatory to the transaction, it would be superfluous to expect that the Special Power of Attorney holder should narrate in the complaint that he is aware of the transaction between the parties and on that score, he is representing the complainant. The sworn statement recorded by the Special Power of Attorney holder by way of affidavit is as follows:

"I, S.Manohar, S/o late Sri.V.Siddappa, Aged about 38 years, R/at No. 1095, 35th 'D' Cross, 26th Main, 4th 'T' Block, Jayanagar, Bangalore-560 041, do hereby solemnly affirm and state on oath as follows:

1. I submit that I am the Special Power of Attorney Holder for the Complainant in the above case and I am well aware of the facts of the case and hence, I am competent to swear to this affidavit.

2. I submit that the Complainant was the sole and absolute owner of immovable property being agricultural lands bearing i) Sy.No. 12/20. earlier portion of Sy.No. 12/21, much earlier portion of Sy.No.12/3B. measuring 22 guntas, ii) Sy. No. 12/21, earlier portion of Sy. No. 12/2, much earlier portion of Sy.No. 12/3B, measuring 13 Guntas, iii) Sy.No. 12/22, earlier portion of Sy.No.12/2, much earlier portion of Sy. No. 12/3B, measuring 13 Guntas, iv)Sy.No. 12/23 earlier portion of Sy.No. 12/2, much earlier portion of Sy. No. 12/----measureing 25 Guntas, v) Sy. No. 12/24, earlier portion of Sy. No 12/2 much earlier portion of Sy.No. 12/3B, measuring 03 Guntas, vi) Sy.No.12/25 earlier portion of Sy.No. 12/2, much earlier portion Sy.No.12/3- measuring 32 and half guntas, vii) Sy.No. 14/2, measuring 32 Guntas and viii) Sy.No. 14/4 measuring 10 Guntas, situated at Heggadagere Village, Bidadi Hobli, Ramnagara Taluk and District, and **the said contract was put in writing by virtue of execution of absolute sale deed between the accused above named and the Complainant and her family members.**

3. I submit that the sale deed was executed by the Complainant and her family members on 14:03:2025 and registered as document No.RMN-1-13442/2024-2025 in Book No.1, in the office of the Sub-Registrar, Ramnagara, for a sale consideration of Rs.3,89,65,000/-(Rupees Three Crores Eighty Nine Lakhs Sixty Five thousand only).

4. I submit that the accused No.2, representing the First and third mentioned above, at the time of registration of absolute Sale Deed on 14.3.2025 towards sale consideration amount, vide registered as document No.RMN-1-13442/2024-2025 in Book No.1, in the office of the Sub-Registrar, Ramanagara, has issued the following cheques, all the cheques were drawn on

HDFC Bank, First Floor, No.2934E & 2935E, Magadi Chord Extension, Vijayanagar Club. Road, Bangalore - 560 040, in favour of the Complainant.

a) Cheque No. 000033 dated 08.04.2025 - Rs.25,00,000/-

b) Cheque No.000034 dated 15.04.2025 - Rs.25,00,000/-

c) Cheque No.000035 dated 25.04.2025 - Rs.25,00,000/-

d) Cheque No.000041 dated 30.04.2025 - Rs.16,65,000-

Total for: Rs. 91,65.000/-

(Total Rs.91,65,000/- (Rupees Ninety Five Lakhs, Sixty Five thousand only)

5. I submit that as requested by the accused the Complainant has presented the above mentioned cheques through her banker HDFC Bank, Jayanagar 4th 'T' Block, Bangalore – 560 041, were returned. unpaid by the accused bankers with endorsement Cheque Nos.000033, 000034, 'STOP PAYMENT' 000035 and 000041 dated 20.6.2025, 'FUNDS INSUFFICIENT, issued towards sale consideration amount at the time of execution of absolute sale deed dated 14.3.2025.

6. I submit that upon the return of the above mentioned cheques given to Complainant on the date of Registration of Sale Deed dated 14.3.2025, approached the accused personally several times demanding the payments due, but the accused requested her to grant some more time in order to arrange funds but they are postponing on one pretext or the other and not made payments due to the Complainant.

7. I submit that the accused have not honored the legally enforceable payments due to the Complainant, she has waited with good hope that the accused will clear the amounts due to her.

8. I submit that the accused have issued the above mentioned cheques towards the sale consideration amount and legally enforceable debt, when the same were presented for

encashment the cheques were returned unpaid by the accused bankers with an endorsement as 'STOP PAYMENT' and 'FUNDS INSUFFICIENT' and thus all the accused have committed an offence punishable under section 138 of the N.I.Act.

9. I submit that the accused No.1, above named being a Compnay and accused No.2 and 3, are the Partners and are aware of the business transactions of day-today and all the accused are severally and jointly liable for the offences committed by them.

10. I submit that the accused have issued the above mentioned cheques towards sale consideration amount and legally enforceable amount at the time of registration of absolute Sale Deed dated 14.3.2025 and towards discharge of their liability, when the same were presented for encashment the cheques were returned unpaid by the accused bankers with an endorsement as 'STOP PAYMENT' and 'FUNDS INSUFFICIENT'.

11. I submit that upon the receipt of the returned cheques with no other option, the complainant has issued a legal notice dated 17.7.2025 by RPAD and SPEED POST calling upon the accused to repay the cheques amount with interest.

12. The cause of action for the complaint arose that the cheque bearing Nos. 000033 dated 8.4.2025, 000034 dated 15.4.2025, 000035 dated 25.4.2025 and 000041 dated 30.4.2025, issued by the accused were returned unpaid by the accused bankers with an endorsement 'STOP PAYMENT' and 'FUNDS INSUFFICIENT' dated 20.6.2025, subsequently the complainant has issued a legal notice dated 17.7.2025 by RPAD and Speed Post and further, the complainant personally intimated to the accused about the return of cheques and demanded for return of the amount, is within jurisdiction of this Hon'ble Court.

13. I submit that the accused have received the notices sent by RPAD & Speed Post on 18.7.2025 and postal Department has not returned the Acknowledgment Due Cards till this day. Further I submit that the accused upon receipt of the notice

have given an untenable reply dated 11.8.2025 and not complied the demands made in the notice.

14. I submit that I have produced all the original documents pertaining to the above case for the kind perusal of this Hon'ble Court.

15. I submit that I have complied with all the provisions of Section 138 of N.I.Act.

WHEREFORE, I pray that this Hon'ble Court may be pleased to punish the accused in accordance with law and to award suitable compensation, in the interest of justice.

IDENTIFIED BY ME
Sd/- Sd/-
ADVOCATE DEPONENT

VERIFICATION

I, S.MANOHAR, the SPA Holder for the complainant, do hereby verify the contents what is stated above is true and correct to the best of my knowledge, information and belief.

BANGALORE Sd/-
DATED:23.10.2025 DEPONENT"

(sic)

In the sworn statement, the Special Power of Attorney holder narrates that he is the Special Power of Attorney holder and is well aware of the facts of the case and hence he is competent to swear to the affidavit.

9. Therefore, in the peculiar facts of this case where the Special Power of Attorney holder is also a party to the transaction and has indicated in the sworn statement that he is aware of the transaction, ostensibly so, the complaint cannot be said to vitiate on that score. The reason for the Special Power of Attorney holder representing the complainant is also found in the document itself. The reason is as follows:

> "**AND WHEREAS I am having health issues, suffering with cancer and recently underwent operation and I am unable to appear and attend the Courts regularly and personally, and hence, I hereby authorize SRI S.MANOHAR, MY SON, to do the following acts, deeds and things:**"
>
> (Emphasis added at each instance)

The complainant/mother is suffering from cancer and therefore, she has appointed her son as Special Power of Attorney holder. Thus, the absence of a line in the complaint that the Special Power of Attorney holder is aware of the facts, in the peculiar facts of the present case, is not and cannot be said to be vitiating the complaint itself.

10. The second submission is with regard to maintainability of the complaint on the score that a civil suit is also filed. It is trite law that civil suit for recovery of money can go hand in hand with the complaint under Section 138 of the Act. One is for the purpose of penalizing the dishonor of a cheque and the other in terms of general law for recovery of money. In this regard, it is apposite to refer to the judgment of the Apex Court and that of the co-ordinate bench of this Court.

10.1. The Apex Court in the case of **D. PURUSHOTAMA REDDY v. K. SATEESH**[1], has held as follows:

"…. …. ….

> **3.** The respondent-plaintiff filed a suit against the appellants, which was marked as OS No. 1844 of 2004, for recovery of a sum of Rs 3,09,000 with interest. In the plaint, it was averred that Shri K. Balasubramanyam (father of the respondent) and Defendant 1 (Appellant 1 herein) were good friends. Defendants 1 and 2 had been carrying on business. They approached the plaintiff through Shri K. Balasubramanyam for financial assistance and obtained a loan of Rs 2,00,000 (Rs. 1,00,000 on 15-3-2001 and Rs. 1,00,000 on 25-3-2001). Two promissory notes were also executed therefor.
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> **4.** The appellant-defendants purported to be in discharge of the said debt issued two cheques bearing Nos. 3960 dated 15-3-2003 and 3959 dated 31-5-2003 drawn on Bank of India, which on presentation, were returned

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[1](2008) 8 SCC 505

dishonoured. Indisputably, a complaint under Section 200 of the Code of Criminal Procedure, 1973 read with Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short "the Act"), marked as CC No. 19337 of 2003, was filed. A judgment of conviction and sentence against the appellant was passed therein by an order dated 15-12-2005 sentencing him to pay a sum of Rs. 2,10,000 by way of fine and in default thereof to undergo simple imprisonment for a period of three months. It was also directed that out of the said amount of fine, a sum of Rs. 2,00,000 would be paid to the complainant by way of compensation in terms of Section 357 of the Code of Criminal Procedure (for short "the Code") and the remaining amount was to be payable to the State. In the said criminal proceedings, the appellants deposited a sum of Rs. 31,500 on 7-2-2006, Rs. 68,500 on 21-7-2006 and Rs. 1,10,000 on 13-12-2006.

5. OS No. 1844 of 2004 was decreed by the trial court by a judgment and order dated 23-1-2006, ordering:

> "This suit is hereby decreed for a sum of Rs. 3,09,000 (Rupees three lakh nine thousand only) with court costs and current interest at 6% p.a. on the principal amount of Rs. 2,00,000 from the date of suit till realisation. The defendants are jointly and severally liable to pay the decretal amount."

... ...

8. Contention of the respondent, however, is that as the said question was not and could not have been raised before the trial court, the impugned judgment is sustainable. It was furthermore urged that in view of the well-settled principle of law that pendency of a criminal matter would not be an impediment in proceeding with a civil suit, the impugned judgment should not be interfered with.

9. A suit for recovery of money due from a borrower indisputably is maintainable at the instance of the creditor. It is furthermore beyond any doubt or dispute that for the same cause of action a complaint petition under terms of Section 138 of the Act would also be maintainable."

10.2. A co-ordinate Bench of this Court in the case of **CREF FINANCE LIMITED v. SHANTHI HOMES PRIVATE LIMITED**,[2]has held as follows:

> "…. …. ….
>
> **15.** A feeble attempt is made by the respondents and it is contended by Learned Counsel that both the civil and criminal cases for recovery of dues and dishonour of cheques cannot be maintained. On this aspect of the matter, Learned Counsel for the appellant has placed reliance on the decision of the Apex Court, *D. Purushotama Reddy* v. *K. Sateesh* [(2008) 8 SCC 505]. The appellant has filed O.S. No. 15045/01; wherein he has sought for a decree against the respondents for a sum of Rs. 9,20,59,032-00. Simultaneously, he filed the complaint before the Trial Court to initiate action for the offence punishable under Section 138 of the Act. **There is no dispute so far as this position is concerned. The Apex Court in the aforesaid decision has held "simultaneous civil suit and complaint case under Section 138 of the N.I. Act for the same cause of action are maintainable". Therefore, the respondents cannot take any advantage of filing the suit by the appellant for recovery of dues."**
>
> (Emphasis supplied at each instance)

The afore-quoted judgments of the Apex Court and of this Court, in unambiguous terms, holds that a civil suit and the proceedings instituted under Section 138 of the Act can go on simultaneously. Therefore, the said submission which is feignly contended as a supplementary submission to the primary submission that the

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[2]2013 SCC OnLine Kar 7562

Special Power of Attorney holder not stating that he is aware of the fact, is *sans* countenance.

11. For the aforesaid reasons, finding no merit in the petition, the petition stands ***dismissed.***

Consequently, I.A.No.1 of 2026 also stands disposed.

SD/-
(M.NAGAPRASANNA)
JUDGE

bkp
CT:MJ