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HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 323 of 2019

Bhilai Engineering Corporation Limited. Industrial Area, Hathkhoj, Bhilai, Through Its, Attorney Dr. R.K. Shukla, General Manager, Bhilai, Engineering Corporation Ltd. Industrial Area, Hathkhoj, Bhilai, Chhattisgarh., District : Durg, Chhattisgarh

... Appellant

versus

1 - S.R. Global Private Limited A Comany Registered Under Companies Act 1956, With Its Corporate Office At Park Mansion, Flat 3, 2nd Floor, 57-A, Park Street Kolkata West Bangal 700016., District : Kolkata, West Bengal

2 - Mr. Bhaskar Ghosh Managing Director, S.R. Global Private Limited, Park Masion, Flat 3, 2nd Floor, 57- A, Park Street, Kolkata, West- Bangal, 700016., District : Kolkata, West Bengal

... Respondents

(Cause title taken from Case Information System)

For Appellant	:	Mr. Shrishti Attal, Advocate
For Respondents	:	None

Hon'ble Shri Justice Ravindra Kumar Agrawal

Order on Board

10/09/2026

1. The acquittal appeal has been filed by the appellant under Section 378(4) of the Code of Criminal Procedure, 1973 against the

impugned judgment of acquittal dated 16.07.2012, passed by learned Judicial Magistrate First Class, Durg, in Complaint Case No. 356/2011, whereby the complaint case filed by the appellant/complainant under Section 138 of Negotiable Instruments Act, 1881 (in short "NI Act") is dismissed.

2. For the sake of convenience, the status of the parties are referred hereto as per their status shown in the complaint case.
3. The case of the complainant is that the complainant is a limited company having registered office at Hathkhoj, Bhilai and duly registered under the Companies Act, 1956. The complainant company engaged in manufacturing of technical structure and other engineering articles and its fabrication. The accused company was required such technical structure and engineering articles for his contractual work at Sinter Plant, Duburi, Odisha and a purchase order was issued on 19.02.1999. Under the said purchase order, the complainant company had supplied various material to the accused company, for which the payments have also been made time to time. In course of their business for payment of the material supplied by the complainant company, the accused company issued a cheque bearing No. 039521, dated 30.04.2000 amounting to Rs. 15,52,850/-, which was of Canara Bank, Overseas Branch, Calcutta. When the complainant company deposited the said cheque in his bank account for its clearance on 25.09.2000, the said cheque was dishonored by the payee bank on the ground of funds insufficient. A legal demand notice was served by the complainant company to his counsel to the accused company on 08.10.2000. Though the legal demand notice

was replied by the accused company, but the amount under dispute have not been paid and then the complainant company has filed the complaint case under Section 138 of NI Act on 13.11.2000 before the learned trial Court.

4. The complaint case filed by the complainant was registered on 12.12.2000 and notices were issued to the accused company. The details of offence have been explained to the accused company on 26.07.2006, thereafter the learned trial Court recorded evidence of the parties. The accused statement under Section 313 of CRPC have also been recorded and then the defence witness has been examined by the accused company. After conclusion of the trial of the complaint case, the learned trial Court passed its judgment on 16.07.2012, whereby the accused company has been acquitted from the alleged offence of Section 138 of NI Act on the ground that the complainant company has failed to prove that Mr. R.K. Shukla, who is prosecuting the complaint case is duly authorized by the complainant company. It has also been observed that no any resolution of the board of the company authorizing Mr. R.K. Shukla to prosecute the complaint case, nor any power of attorney in his favour has been filed in the case and by holding that Mr. R.K. Shukla is not the competent person to prosecute the complaint case, dismissed the same by the impugned judgment, which is under challenge in the present acquittal appeal.
5. The leave to file acquittal appeal was granted in favour of the appellant by this Court on 11.04.2019 and the acquittal appeal was admitted for hearing.

6. Learned counsel appearing for the appellant would submit that the complaint case was dismissed by the learned trial Court solely on the ground of incompetency of Mr. R.K. Shukla to prosecute the complaint case for want of any document of his authorization from the company. In the complaint itself it has been mentioned that, Mr. R.K. Shukla was the Divisional Manager (Personnel) and power of attorney holder on behalf of the complainant company. Even if no document is filed with respect to the authorization on behalf of the complainant company, the learned trial Court may direct the complainant to file the relevant document of his authorization, instead of dismissing the complaint on this ground. Non-filing of the authorization letter of resolution of the board along with the complaint memo is a curable defect, which can be cured at a subsequent stage also and mere technicality may not come on the way to decide the complaint case on merits. By relying upon the judgment passed by the Hon'ble Supreme Court in the case of **Haryana State Cooperative Supply and Marketing Federation Limited v. Jayam Textile and others**, 2014 (4) SCC 704. She would submit that the impugned judgment of acquittal may be set aside and the matter may be remitted back to the learned trial Court for its fresh adjudication after providing proper opportunity to file the authorization in favour of the person, who is prosecuting the complaint case on behalf of the company.
7. No one appears on behalf of the respondents, though served.

8. I have heard learned counsel for the appellant and perused the record of the trial Court.
9. From perusal of the impugned judgment dated 16.07.2012, passed by the learned trial Court, it transpires that the learned trial Court has considered that Mr. R.K. Shukla, who is prosecuting the complaint case on behalf of the company has not filed any document of his power of attorney or any board resolution of the complainant company authorizing him to prosecute the complaint case and to give evidence on behalf of the company and therefore, he cannot be considered to be the competent person to prosecute the complaint case, and thereby the dismissed the complaint on this ground.
10. In the case of **Jayam Textile** (supra), the Hon'ble Supreme Court has held that if the trial Court were not satisfied, an opportunity ought to have been granted to the complainant to place the relevant document on record and the procedural defects and irregularity, which are curable, should not be allowed to defeat substantive right or to cause injustice. It has been held that:-

“6. Having heard the learned counsel for the parties and after perusing the material on record, we find that admittedly authorisation by the Board of Directors of the appellant Federation was not placed before the courts below. But, we may notice that a specific averment was made by the appellant Federation before the learned Judicial Magistrate that the said general power of attorney had been filed in connected case being CC No. 1409 of 1995, which has neither been denied nor disputed by the respondents. In any case, in our opinion, if the courts below were not satisfied, an

opportunity ought to have been granted to the appellant Federation to place the document containing authorisation on record and prove the same in accordance with law. This is so because procedural defects and irregularities, which are curable, should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. (See Uday Shankar Triyar v. Ram Kalewar Prasad Singh.)”

11. In the case of **M.M.T.C. Limited and another v. MEDCHL Chemicals and Pharma (P) Limited and another**, 2002 (1) SCC 234, the Hon'ble Supreme Court has held that:-

“12. In the case of Associated Cement Co. Ltd. v. Keshvanand it has been held by this Court that the complainant has to be a corporeal person who is capable of making a physical appearance in the court. It has been held that if a complaint is made in the name of an incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the court. It is held that the court looks upon the natural person to be the complainant for all practical purposes. It is held that when the complainant is a body corporate it is the de jure complainant, and it must necessarily associate a human being as de facto complainant to represent the former in court proceedings. It has further been held that no Magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. It has been held that there may be occasions when different persons can represent the company. It has been held

that it is open to the de jure complainant company to seek permission of the court for sending any other person to represent the company in the court. Thus, even presuming, that initially there was no authority, still the company can, at any stage, rectify that defect. At a subsequent stage the company can send a person who is competent to represent the company. The complaints could thus not have been quashed on this ground.”

12. In the case of **M.M.T.C. Limited** (supra), the Hon'ble Supreme Court has held that a complaint under Section 138 of the NI Act can be filed in the name of and on behalf of the payee-company and merely because the complaint has been signed and presented by a person who was not duly authorized by the Board of Directors to do so, the complaint cannot be thrown out on that ground. It has further been held that even presuming that initially there was no authority, the company can, at any stage, rectify such defect and, at a subsequent stage, can authorize a competent person to represent the company. The Hon'ble Supreme Court, therefore, held that such a defect is curable and cannot be made a ground to terminate the proceedings.
13. The aforesaid principles have also been considered by the Hon'ble Supreme Court in **A.C. Narayanan v. State of Maharashtra and another**, (2014) 11 SCC 790, wherein it has been held that filing of a complaint under Section 138 of the NI Act through a power of attorney holder is legally permissible, subject to the requirement that the person prosecuting the complaint has the requisite authority and knowledge of the transaction. The said judgment, therefore, does not

lay down that every omission to produce the authorization document at the initial stage necessarily results in dismissal of the complaint.

14. In the present case, it is not in dispute that the complainant is a limited company and the complaint itself has been filed in the name of the complainant-company. The learned trial Court has not dismissed the complaint on the ground that the complainant-company was not the payee or holder in due course of the cheque, nor has it recorded any finding that the cheque was not issued towards a legally enforceable liability or that the ingredients of Section 138 of the NI Act were otherwise not satisfied. The sole ground for dismissal of the complaint is that Mr. R.K. Shukla, who had instituted and prosecuted the complaint on behalf of the complainant-company, had not produced the power of attorney or the Board resolution authorizing him to prosecute the complaint and to depose on behalf of the company.
15. It is also significant that, as specifically pleaded in the complaint, Mr. R.K. Shukla was the Divisional Manager (Personnel) and was acting as the power of attorney holder of the complainant-company. Thus, the question before the learned trial Court was essentially whether Mr. R.K. Shukla was duly authorized by the complainant-company to institute and prosecute the complaint. In such circumstances, even if the learned trial Court entertained doubt regarding his authorization, the appropriate course would have been to afford an opportunity to the complainant-company to produce the relevant power of attorney, Board resolution or other authorization document, rather than

dismissing the complaint on a technical ground without adjudicating the allegations on their merits.

16. The judgment in **Jayam Textile** (*supra*), relied upon by learned counsel for the appellant, is also squarely applicable to the facts of the present case. The Hon'ble Supreme Court has emphasized that where a defect in the institution or prosecution of a complaint is procedural and curable, the Court ought to grant an opportunity to the complainant to place the relevant document on record and such procedural defect should not be permitted to defeat substantive rights or cause injustice.
17. In the present case, the learned trial Court, instead of examining whether the complainant-company could establish the authorization of Mr. R.K. Shukla by permitting it to produce the relevant document, has proceeded to dismiss the complaint itself. Such an approach, in the considered opinion of this Court, has resulted in the complaint being rejected on a technical ground without an adjudication of the substantive controversy between the parties. The defect, if any, relating to the authorization of the representative of the complainant-company was capable of being cured and, therefore, could not have been made the sole basis for acquittal of the accused.
18. It is true that an appellate Court dealing with an appeal against acquittal is required to bear in mind the presumption of innocence available to the accused and should interfere with an order of acquittal only for substantial and compelling reasons. However, where the acquittal is founded upon an erroneous approach to the

law and the trial Court has failed to adjudicate the complaint on its merits, the appellate Court is competent to interfere with such judgment and remit the matter for fresh consideration in accordance with law.

19. In view of the foregoing discussion and considering the law laid down by the Hon'ble Supreme Court in ***M.M.T.C. Limited*** and ***Jayam Textile*** (supra), this Court is of the considered opinion that the learned trial Court was not justified in dismissing the complaint and acquitting the accused solely on the ground that Mr. R.K. Shukla had not produced the power of attorney or Board resolution authorizing him to prosecute the complaint. The impugned judgment, therefore, cannot be sustained.
20. Accordingly, the acquittal appeal is **allowed**. The impugned judgment dated 16.07.2012 passed by the learned Judicial Magistrate First Class, Durg, in Complaint Case No. 356/2011 is hereby **set aside**. The matter is remitted to the learned trial Court for fresh adjudication in accordance with law. The complainant-company shall be permitted to place on record the relevant document(s) establishing the authorization of Mr. R.K. Shukla to institute and prosecute the complaint and to lead evidence, if so required. Thereafter, the learned trial Court shall proceed to decide the complaint afresh on its merits, after affording adequate opportunity of hearing to both the parties.

21. The parties shall appear before the learned trial Court on **29.09.2026**.

The learned trial Court shall make all endeavour to dispose of the complaint expeditiously.

22. The record of the trial Court be sent back forthwith along with a copy of this order.

Sd/-
(Ravindra Kumar Agrawal)
Judge

ved

HEAD NOTE

Non-production of the power of attorney or Board resolution authorizing the representative of the company along with the complaint under Section 138 of the Negotiable Instruments Act, 1881, is a curable defect and cannot, by itself, be made a ground for dismissal of the complaint without affording an opportunity to produce the relevant authorization document.