IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 51 OF 2012

M/s Valpoi Valley Botanicals Pvt. Ltd.,
represented by its Senior Manager,
Mr. Rakesh Singh, r/o Shingne,
Nagargao, Sattari. …. Appellant

V/s

Shri Anil Ashok Jaware,
Major of age,
House No. not known,
r/o Chimbel,
Panaji – Goa. …. Respondent

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Shri Anthony D'Silva, Advocate for the Appellant.

Shri Samir Taleigaonkar, Advocate for the Respondent.

CORAM : C.V. BHADANG, J.

DATED : 10th AUGUST, 2015

ORAL JUDGMENT :

By this appeal, the original complainant is challenging the acquittal of the respondent from an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (the N.I. Act, for short).

2. The brief facts are that the appellant, which is a Private Limited Company is dealing *inter alia*, in the business of sale of plants and supply of ornamental flowers. On 10.10.2010, the appellant had supplied to the respondent, cut Gerbera flowers worth Rs.91,020/- at his flower shop at Panaji. The respondent had issued a cheque of even date, drawn on Bank of India, Miramar Branch for Rs.91,020/-, towards the payment of price of the Gerbera flowers. When the said cheque was presented for encashment, it was returned dishonoured on account of insufficient funds. The appellant issued a statutory notice and thereafter, filed a complaint under Section 138 of the N.I. Act. At the trial, the appellant examined its representative, Mr. Rakesh Singh (PW-1) and produced certain documents. The statement of the respondent came to be recorded under Section 313 of Cr.P.C., wherein the respondent set up his defence of total denial. It was contended that the respondent had a business/dealing with the appellant from the year 2008 to 2009. Thereafter, the respondent had asked the appellant not to supply the said flowers to any other flower shops at Panaji, in consideration whereof, the appellant has asked the respondent to pass blank cheques. It was contended that the subject

cheque was one of such blank cheques. It was also contended that after the year 2009, the respondent had stopped doing business with the appellant. However, he failed to get back the blank cheques.

3. The respondent did not lead any evidence in defence. The learned Magistrate framed a solitary point for determination, as to whether, the respondent had issued any cheque, towards discharge of a legally enforceable debt. The learned Magistrate in paragraph 16 of the impugned judgment came to the conclusion that Mr. Rakesh Singh (PW-1) had not supported the complaint in as much as, it was neither claimed in the complaint nor in the demand notice or in the affidavit in evidence, that the cheque was issued towards supply of flowers for the months of August and September, 2010. This was because in cross examination, the respondent had claimed that the flowers were supplied in the months of August and September, 2010. From paragraph 17 onwards, the learned Magistrate has dealt with the authority of Mr. Rakesh Singh (PW-1), to file the complaint and to depose on behalf of the complainant. After considering the various judgments, including

the judgment in the case of, **National Small Industries Corporation Ltd. Vs. State (NCT) of Delhi and Others**, reported in **(2009) 1 SCC 407** and the judgment dated 22.06.2009 in Criminal Miscellaneous Application No. 5/2009 passed by this Court, in the case of, **V.P.K. Urban Co-operative Credit Society Ltd. Vs. Shri Ramesh Mahableshwar Naik and Another**, it was held that the complaint filed by Mr. Rakesh Singh (PW-1) was without any Resolution, authorising him to represent the Company, either to file complaint or to depose on behalf of the Company. As such the complaint was not maintainable. In that view of the matter, the respondent came to be acquitted.

4. It would be necessary at this stage, to mention that during the course of trial, the appellant had filed an application dated 08.12.2011, seeking to produce:-

(a) Authority Letter authorising Mr. Rakesh Singh (PW-1) to file the complaints and

(b) The Certificate of Registration.

The learned Magistrate by an order dated 09.01.2012, had only allowed the production of Registration

Certificate, while disallowing the production of the Authority Letter. The learned Magistrate was of the opinion that the said authority was not relevant, since, the Authority Letter does not have any retrospective effect, so as to clothe Mr. Rakesh Singh (PW-1) with the authority to file the complaint. Admittedly, this order was not challenged by the appellant and is challenged for the first time in this appeal.

5. I have heard Shri D'Silva, the learned Counsel for the appellant and Shri Taleigaonkar, the learned Counsel for the respondent. With the assistance of the learned Counsel for the parties, I have perused the impugned judgment and the oral and documentary evidence led.

6. It is submitted by Shri D'Silva, the learned Counsel for the appellant that the appellant had tried to cure the defects by producing the Authority Letter dated 30.11.2011, signed by one of the Directors Mr. Naresh Natrajan. It is submitted that in the said Authority Letter, Mr. Rakesh Singh (PW-1), who was the Senior Manager was authorised to present criminal complaints, to sign pleadings and affidavits and also to depose on behalf of

the Company. It is submitted that the Authority Letter is comprehensive enough to clothe Mr. Rakesh Singh (PW-1) with all the authority to prosecute the complaint on behalf of the appellant. It is submitted that the production of the Authority Letter could not have been refused, on the ground that it does not confer authority to Mr. Rakesh Singh (PW-1), retrospectively. The learned Counsel has placed reliance on the decision of the Hon'ble Supreme Court in the case of **M/s Shankar Finance & Investments Vs. State of Andhra Pradesh and others**, reported in **AIR 2009 S.C. 422**, in order to submit that Section 142 of the N.I. Act envisages only two requirements namely, (i) the complaint has to be in writing and (ii) the complaint should be in the name of the payee or the holder in due course. It is submitted that in the present case, the complaint is filed in the name of the Company, represented by the Senior Manager, Mr. Rakesh Singh. It is submitted that thus, statutory requirement of Section 142 of the N.I. Act stood complied with and the complainant could not have been non suited, on the account of the absence of authority of Mr. Rakesh Singh (PW-1), more so, when an attempt was made to produce the Authority Letter, signed by one of the Directors. The learned Counsel would submit that in the the case of, **MMTC Ltd. Vs. MEDCHL Chemicals & Pharma (P) Ltd.**, reported in **2002 (1) SCC 234**, which has been relied upon by the Hon'ble Supreme Court in the case of **M/s Shankar Finance & Investments** (supra), it has been held that the basic principle, governing criminal jurisprudence is that any person can set the criminal law in motion. The learned Counsel submitted that no specific issue/point was framed, on the ground of authority given to Mr. Rakesh Singh (PW-1), to file the complaint. The only point framed was whether the disputed cheque was in discharge of a legally enforceable debt. It is submitted that thus, the said point could not have been answered in the negative, on the finding as to absence of authority of Mr. Rakesh Singh (PW-1), to file the complaint. He therefore, submitted that the impugned judgment be set aside and the matter, be remitted back to the learned Magistrate for a fresh decision, in accordance with law.

7. On the contrary, it is submitted by Shri Taleigaonkar, the learned Counsel for the respondent that in both the cases namely, **M/s Shankar Finance & Investments** (supra) and

MMTC Ltd. (supra), the matters were at the stage of issuance of process. It is submitted that in the present case, the trial is over and the respondent has been acquitted. It is submitted that thus, the appellant cannot be permitted to cure the defect or fill lacuna by producing an Authority Letter signed by one of the Directors. It is next submitted that even, assuming that the said Letter confers power on Mr. Rakesh Singh (PW-1), to file a complaint on behalf of the appellant, the same would be inconsequential, in as much as, the appellant has not produced the Resolution of Board of Directors, authorising Mr. Naresh Natrajan, to issue such Authority Letter. He therefore, submitted that in either case there is no material on record to show that Mr. Rakesh Singh (PW-1) was having authority to file, prosecute and depose on behalf of the appellant.

8. It is also submitted that the learned Magistrate has rightly considered the evidence of Mr. Rakesh Singh (PW-1) and admission in which Mr. Rakesh Singh (PW-1) has admitted that the Authority Letter dated 05.03.2011 does not authorise him to file the complaint. It is also submitted that the finding on the issue whether the cheque was issued in discharge of a legally

enforceable debt is also, a plausible view, which does not require interference.

9. I have given my anxious consideration to the rival circumstances and the submissions made and I find that no case for interference is made out.

10. It is a matter of record that the appellant is a Private Limited Company. A Company, which is a juristic person can only act in terms of Articles of Association or in terms of specific Resolution passed by the Board of Directors. The Authority Letter dated 05.03.2011, in favour of Mr. Rakesh Singh (PW-1) which was produced alongwith the complaint, reads as under:

> *"We hereby authorise our Senior Manager Mr. Rakesh Singh to represent our Company in dealing with any nuances that may arise in any of our legal proceedings and as such he is authorised to sign documents, deal with our Advocates and attend Court proceedings whether Civil or Criminal in any of the Courts within the jurisdiction of Goa and Maharashtra arising out of our day-to-day business and other related activities."*

11. Mr. Rakesh Singh (PW-1) has admitted in his cross examination that by this Letter, no authority is granted to him to file a complaint. Perhaps in order to get out of this difficulty, an application was filed on 08.12.2011, to produce the copy of another Authority Letter dated 30.11.2011 and Registration Certificate. For the purpose of the present controversy, we are concerned, only with the Authority Letter dated 30.11.2011, which reads as under:

> *"We hereby authorize, our Senior Manager Mr. Rakesh Singh, to sign and present the criminal complainants (sic.) on behalf of the Company and also to sign pleading and affidavits on behalf of the Company and also to depose, give evidence and withdraw such criminal complaints. The Company also authorizes said Mr. Rakesh Singh to represent the Company in appellate Courts and to exercise all powers and to do all such acts, deeds and things referred above in all such criminal complainants (sic.) or proceedings."*

12. The learned Magistrate by order dated 09.01.2012 has refused to permit the appellant, to place the said Authority Letter on record, *inter alia* on the ground that the Letter sought

to be produced "cannot to said to be having retrospective effect more so, when it does not state so". Be that as it may, even assuming that this Authority Letter is read into evidence, I find that it does not take the case of the appellant, any further. This is because, the said Authority Letter is only signed by Mr. Naresh Natrajan, claiming to be a Director of the appellant. It is neither alleged nor stated in the Authority Letter that the same is issued in consequence of a Resolution of the Board of Directors, as such. Admittedly, no such resolution is produced on record. In the case of, **VPK Urban Co-operative Credit Society Ltd. Vs. Shri. Shaikh Rucnoddin Mohammed and Another**, reported in **2010 ALL MR (Cri) 1085**, the appellant-complainant was a co-operative society. The learned Magistrate had framed a specific issue as regards maintainability of the complaint for non-production of proper authorisation to file the complaint. The learned Magistrate after considering the Letter of Authority and the Resolution, found that there was no direct authority given to the signatory to file the complaint. He was only authorised to depose on behalf of the complainant. In an appeal against acquittal, this Court after considering the contents of the Letter of Authority, found that although, there is subsequent ratification of filing of the complaint by Resolution dated 10.06.2007, the said Resolution could not have cured the defect, at the initial stage of filing of the complaint. In that case, this Court also considered the judgment of the Hon'ble Apex Court in the case of, **National Small Industries Corporation Limited Vs. State (NCT of Delhi) and Others**, reported in **2009 ALL SCR 538**, in which it has been held that such a complaint can be filed on behalf of the Company, which is an incorporeal person by an employee or even non-employee, who is empowered to represent the Company, either by Resolution or by Power of Attorney. It was held on facts, that since, there was no proper authorisation, the complaint was not maintainable.

13. In the case of, **Shri Ashok Bampto Pagui Vs. M/s Agencia Real Canacona Pvt. Ltd. and Another**, reported in **2007 ALL MR (Cri) 2338**, there was a Power of Attorney in favour of one Nishakant Pednekar, who was examined in support of the complaint. That Power of Attorney, was shown to be given by the Managing Director and the Director of the complainant Company. The said Power of Attorney indicated

that it was given in pursuance to Resolution dated 10.02.2003 passed by the company. However, copy of the said Resolution was not produced. This Court after considering the various judgments including the judgment of the Hon'ble Supreme Court, in the case of, **MMTC Ltd.** (supra) has held thus, in paragraph 21 of the judgment:

> *"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. In the case at hand, the complaint was filed by one of the Directors and as already stated by a Director who had initially complained to the Police that the subject cheque was forged by the accused, and, without any resolution of the company or any authorization from the Board of Directors. The view held by me is consistent with the views expressed in the decisions referred to herein above, namely, those of the Madras High Court in* **Ruby Leather Exports Vs. K. Venu** *(supra), Andhra Pradesh High Court and Delhi High Court which is now confirmed by the view held*

by the Apex Court in Dale and Carrington Invt. (P) ltd. And another Vs. P.K. Prathapan and others (supra) and therefore I hold that the complaint in this case was not filed by the company as required under Clause (a) of Section 142 of the Act and on such a complaint no process could have been issued much less a conviction imposed. The said Shri Prashant Shirodkar could not have filed the same merely in his capacity of a Director. He had to file the same only with authorization from the Board of Directors. As already stated, prima facie, it appears that such authorization was issued by the complainant company in favour of Shri Pednekar as can be seen from the copy of power of attorney produced."

14. Thus, it can be seen that unless and until it is shown that the Director, Mr. Naresh Natrajan is authorised to sign an Authority Letter in favour of Mr. Rakesh Singh, the same would be of no avail to the appellant. In that view of the matter, the view taken by the leaned Magistrate appears to be a plausible view, which does not require interference, in the exercise of limited jurisdiction available to this Court, in an appeal against

acquittal.

15. In the result, the appeal is without any merit and is hereby dismissed.

C. V. BHADANG,J

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