

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.149 OF 2013

M/S.GOLDFIELD FRAGRANCES PVT. LTD.)...APPELLANT

V/s.

SHWET CHEMICALS INDIA PVT. LTD.&ORS.)...RESPONDENTS

Shri Ajit J. Shobhawat i/b. Advani & Co., Advocate for the Appellant.

Shri Umesh Kumar h/f. J. Sharma, Advocate for Respondent Nos.1 and 2.

Shri V.B.KondeDeshmukh, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 1st FEBRUARY 2016.

ORAL JUDGMENT :

1 The appellant – a private limited company – is the original complainant. It had filed a complaint against the respondent nos.1 and 2 herein, alleging commission of an offence punishable under Section 138 of the Negotiable Instruments Act.

The Metropolitan Magistrate, 13th Court, Dadar, Mumbai, after holding a trial, acquitted the respondent nos.1 and 2. Being aggrieved thereby, the appellant company has filed the present appeal, after obtaining special leave of this court.

2 When the appeal came up for final hearing today, the learned counsel for the appellant submitted that the dispute between the parties has been settled, and that, he does not wish to advance any arguments in support of the appeal. Infact, he submitted that the appeal be permitted to be withdrawn. However, the appeal having been admitted, cannot be permitted to be withdrawn simplicitor. Even the learned counsel for respondent nos.1 and 3 does not wish to make any submissions in the matter.

3 Under these circumstances, the appeal is being decided after examining the record and after carefully considering the impugned judgment.

4 For the sake of convenience and clarity, the appellant shall hereinafter be referred to as 'the complainant' and the respondent nos.1 and 2 as 'the accused.'

5 The Magistrate observed that, that the complainant had established that the cheque in question had been issued by the respondents for discharging a legally enforceable debt or other liability. The dates of the cheque and the non-payment of the amount was also not in dispute. The Magistrate acquitted the respondent nos.1 and 2, as according to him, the appellant had failed to prove that the complaint had been filed by a duly authorized person.

6 Indeed, it is only on the complaint of the payee, or the holder in due course, of the cheque in question, the cognizance of an offence punishable under Section 138 of the N.I.Act can be taken. In this case, the payee was the complainant company. The complaint had been filed through one Muralidhar Suvarna, who claimed to be duly authorized to file a complaint on behalf of the

complainant company. In support of his claim, he filed a true copy of the resolution of the Board of Directors of the appellant Company. The genuineness of this resolution and of the true copy was seriously challenged by the learned counsel for the accused during the trial. Inspite of this, and inspite of having opportunities to produce the original resolution or to lead appropriate evidence, the appellant failed to produce such evidence. The Magistrate, therefore, observed that, the appellant had failed to establish that the complaint had been filed by a duly authorized person.

7 The view of the Magistrate does not seem to be suffering from any illegality or error. Consequently, the order of acquittal passed by him does not warrant any interference.

8 The appeal is dismissed.

(ABHAY M. THIPSAY, J.)