

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRM-A-484-MA of 2013  
Date of Decision: January 25, 2016**

M/s Asha Nand Roshan Lal Pvt. Ltd

...Appellant

Versus

M/s Bajrang Steels and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present: Mr. Aksay Bhan, Senior Advocate  
with A.S. Talwar, Advocate  
for the appellant.

Mr. Manisha Lamba, Advocate  
for the respondent.

**FATEH DEEP SINGH, J.**

This is an appeal by unsuccessful complainant impugning judgment dated 22.3.2013 passed by the Court of learned Additional Sessions Judge, Gurgaon, whereby, the learned Judge has upheld the orders passed by learned JMIC, Gurgaon dated 19.11.2012, acquitting the accused even had gone to the extent of holding that appeal in terms of Section 378(4) did not lie.

Heard learned counsel for the parties. The sole point that has arisen out of the submissions of the two sides is that a complaint was made on behalf of the complainant company M/s Asha Nand Roshan Lal Pvt. Ltd through its director Atul Garg who was not able to show any authorisation to file complaint on behalf of the company and, thus, holding that there being nothing on the record purporting to be an authorisation to the complainant to file complaint in

question on behalf of the company the same was, thus, not maintainable.

Appreciating the submissions of the two sides, it is not in any manner agitated as to the status of the complainant being one of the directors of the complainant-company. It is also the stand of the company that these cheques Ex.C1 to Ex.C6 were issued by the accused respondent M/s Bajrang Steels and others and which were dishonoured on account of insufficiency of funds vide bank memos Ex.C7 to Ex.C12 and has established the fact that legal notice Ex.C-13 with postal receipts Ex.C-14 and Ex.C15 was served as per law and, thus, evidently on the face of it the complainant had brought about abundant evidence to support his contention.

The Hon'ble Apex Court in case of **M.M.T.C. Ltd and another vs. Medical Chemicals and Pharma (P) Ltd and another (2002) 1 Supreme Court Cases 234** have considered at length the eligibility criteria and has held that by virtue of Section 142 of the Negotiable Instrument Act, 1881 (for short, 'the Act') the payee or the holder in due course ought to be there and that by virtue of Section 139 of the Act Court it is supposed to presume that a complaint under Section 138 of the Act, wherein, the cheque has been issued was issued in satisfaction of debt or legally enforceable liability and furthermore that the authorisation to a director to file a complaint on behalf of the company by person who is incharge or responsible to the company is not an essential prerequisite. Learned counsel for the respondent does not differs over this. It was further held that since cheques were issued in the name of the company and that the complaint has been filed by the company and placing reliance on another Apex Court's view in case of **Vishwa Mitter vs. O.P. Podar (1983) 4 SCC 701** it was held that anyone can set the criminal law in motion by filing a complaint of facts

constituting an offence before a Magistrate entitled to take cognizance and that no Court can decline to take cognizance on the sole ground that the complainant was not competent to file complaint. Since learned counsel for the respondent could not bring to the notice of this Court that there was any such requirement in the present case and that criteria in enabling the company to file a complaint in terms of Section 142 of the Act is that the complainant is the holder in due course and which stands adequately established. Even otherwise, it is a pure curable defect and, therefore, no prejudice is likely to be caused to the respondent.

In the light of what has been discussed and detailed above, the impugned findings of the Court below are set aside. The appeal is allowed. Complaint is remanded back to the learned Magistrate to proceed ahead into the matter afresh as per law.

**(FATEH DEEP SINGH)**  
**JUDGE**

**January 25, 2016**  
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