

CRM-A-833-MA of 2014
DECIDED ON: FEBRUARY 19, 2016

.....APPLICANT

M/S SIDHI VINAYAK AGENCIES AND OTHERS

....RESPONDENTS

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Mohd. Arshad, Advocate
for the applicant.

Mr. Rakesh Sharma, Advocate
for respondent No.2.

Mr. Raman Sharma, Advocate
for respondent No.3.

JASPAL SINGH, J

Instant application has been preferred under Section 378(4) read with Section 482 of the Code of Criminal Procedure, 1973 (for brevity 'Code') seeking leave to appeal against the order and judgment dated February 28, 2014 passed in a complaint case No. 101/2 of February 01, 2012 by learned Judicial Magistrate Ist Class, Ludhiana whereby, respondents No.1 to 3 have been

acquitted for commission of an offence under Section 138 of the Negotiable Instruments Act, 1881 (for short 'Act').

2. While challenging the impugned order/judgment, it has been argued with vehemence by learned counsel for the applicant that learned trial Court, without examining the merits of the case and completely disregarding the settled law, dismissed the above-referred complaint giving exaggerated importance to a typographical mistake in the letter authorizing the authorized representative to file the complaint. The said complaint was filed on behalf of the appellant pertaining to dishonour of two cheques i.e. cheque No. 925394 dated 11.10.2011 for ₹2,09,799/- and the cheque No. 925395 dated 13.10.2011 for ₹3,56,586/- drawn on State Bank of Bikaner and Jaipur, Madhopuri Chowk, Ludhiana. Applicant has sought special leave to appeal submitting that authorization of authorised representative cannot be thrown out merely on account of a typographical error especially when the same is unchallenged during cross-examination. Similarly, learned trial Court has also failed to consider that once issuance of cheques is admitted, the presumption under Section 118(a) of the Act would arise and further that respondents have taken false plea that the cheques in question were issued , as security for the amount(s) due on account of supply of goods. Not only this even learned trial Court did not appreciate that the dissolution of partnership firm and its conversion into a proprietorship concern was never communicated to the complainant. Rather, respondents continued to do business and issued cheques on the bank account of respondent No.1, as a partnership firm. Even, learned trial Court has failed to consider that accused has taken a false defence that the

goods received have already been returned to the applicant/company especially, in the absence of any authenticated documents. Improper appreciation of the evidence brought on record by the applicant/company before learned trial Court has resulted into miscarriage of justice, which has caused a great prejudice to the applicant on account of which, respondents-accused has secured their acquittal.

3. This Court has given a deep thought to the afore-said submissions made learned counsel for the applicant but find the same to be without any legal weight.

4. Undoubtedly, in the case of acquittal there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocence unless he is proved to be guilty by a competent court of law and secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened. Thus, in such a situation, if two reasonable conclusions are possible on the basis of the evidence brought on record, Appellate Court should not disturb the finding of acquittal recorded by learned trial Court unless there are substantial and compelling reasons.

5. Now in the light of afore-said legal proposition, it is to be seen whether there are grounds for according special leave to appeal against the impugned order/judgment.

6. A close scrutiny of the impugned order/judgment transpires that each and every aspect as well as evidence has been discussed at length by learned

trial Court while acquitting the respondents. As far as the competency or authority or the *locus standi* of the complainant to file a complaint under Section 138 of the Act is concerned, here it would be proper to mention that he is/was not a duly authorised person to lodge a complaint. There is nothing on record to establish that attorney holder was competent to authorise the complainant to lodge the complaint. In fact, he was not concerned in any manner with the affairs of the complainant-company. Not only this, a perusal of Power of Attorney (incorporation certificate) placed on record as Ex.C-2 depicts that Bipin Bajaj who is stated to have been authorised the complainant to lodge a complaint was not one of the Directors'. Rather, Rakesh Bajaj, Ram Parkash Bajaj and Santosh Kumar Bajaj were only the Directors. It is well settled that if a complaint has not been lodged by a duly authorised person on behalf of a company, the basic foundation of the complaint stands shattered. Moreover, it cannot be said that learned Magistrate has not appreciated the evidence available on record as well as legal proposition. Rather each and every aspect of the case has been elaborately discussed and appreciated by the learned Magistrate while extending benefit of doubt to respondents-accused. Learned counsel for the applicant, during the course of arguments, could not point out any substantive ground for according special leave to prefer appeal against the impugned judgment of acquittal.

6. In the light of what has been discussed above, this Court does not find any merit in the instant application. Accordingly, the same is dismissed.

FEBRUARY 19, 2016
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(JASPAL SINGH)
JUDGE