* IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : 20th JULY, 2016
DECIDED ON : 22nd AUGUST, 2016

\+ **CRL.A.1488/2013**

DEV PRAKASH SHARMA ..... Appellant

Through : Mr.H.S.Sharma, Advocate.

VERSUS

THE STATE (GOVT. OF NCT OF DELHI) & ORS.

..... Respondents

Through : Mr.Amit Gupta, APP for State/R1
Mr.Praveen Kapoor, Advocate for R2 & R3.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The instant appeal has been preferred by the appellant – Dev Prakash Sharma to impugn the legality and correctness of a judgment dated 22.04.2013 of learned Metropolitan Magistrate in Complaint Case No.184/2013 '*Dev Prakash Sharma vs. M/s.Concept Lighting Solutions Ltd. & Anr.*' under Section 138 Negotiable Instruments Act whereby the respondents No.2 and 3 (in short Respondents) were acquitted. The appeal is contested by them.

2. The appellant had filed a complaint case against the respondents for commission of offence under Section 138 Negotiable Instruments on 22.02.2008 claiming himself to be proprietor of firm Ideal Associates in whose name cheques in question were issued. The appellant while appearing as CW-1, in the cross-examination, admitted that his son – Bharat Sharma was the 'proprietor' of the Ideal Associates. The Trial Court by the impugned judgment acquitted the respondents as the appellant had no 'locus standi' to institute the complaint case.

3. Learned counsel for the appellant urged that due to confusion, the appellant, a senior citizen was unable to disclose that he was the 'proprietor' of Ideal Associates. Only because of this technical mistake, the Trial Court has acquitted the accused. Learned counsel for the respondents urged that the appellant was unable to prove if he had any nexus with Ideal Associates. Contrary to that, he, in the cross-examination was categorical to state that he had no concern or nexus with the said firm and its 'proprietor' was his son – Bharat Sharma. Since the appellant was not the 'proprietor' of the said concern, he had no 'locus standi' to institute the instant complaint case.

4. On scrutinizing the Trial Court record, it reveals that from the very inception it was the appellant's case that he was the 'proprietor' of Ideal Associates. At nowhere he claimed that Ideal Associates belonged to his son or that he was its 'proprietor'. It was appellant's specific and certain stand that all the transactions, payments, etc. took place with him. This fact was not denied by the respondents any time. It has come on record that the work order (Ex.CW-1/A) was executed with the appellant. The payments were made and received by him. Legal notice (Ex.CW-1/9) was sent by the

appellant to the respondents claiming himself to be 'proprietor' of Ideal Associates. In response (Ex.CW-1/11), the respondents did not deny the appellant's locus standi. Their only plea was that due to non-performance of his part of the contract by the appellant, the respondents suffered losses. It was specifically admitted that ₹1.5 lacs were the balance amount which remained unpaid to the complainant. The respondents, however, claimed that they were not liable to refund that amount to the complainant as huge losses were suffered by them due to appellant's failure to complete its work in time; there was undue delay in the execution of the work as he failed to produce completion certificate from the concerned Engineer-in-charge. In the affidavit produced by way of evidence (Ex.CW-1/A) again, the appellant claimed himself to be the 'proprietor' of firm Ideal Associates. Only in the cross-examination at one stage, the complainant disclosed that he was not related to Ideal Associates. He volunteered to add that it was a proprietorship firm of his son – Bharat Sharma. In 313 Cr.P.C. statement, the respondents did not claim that Ideal Associates was the 'proprietorship' firm of the appellant's son – Bharat Sharma. Nothing was claimed if any transaction had taken place with the appellant's son. The respondent No.3 in defence as DW-1 disclosed that the complainant approached them for installation work of Indian Oil and they had given the work to Dev Prakash Sharma (the appellant) for which an agreement (CW-1/1) was executed. Dev Prakash Sharma had given two cheques of ₹2.5 lacs each at the time of the agreement and they had issued cheques of ₹5 lacs as security to him (Dev Prakash Sharma). It was further admitted that the cheques issued by Dev Prakash Sharma were encashed on 10.04.2007 and for the other cheque Dev Prakash Sharma replaced the same through demand draft on

13.03.2007. The total amount paid by Dev Prakash Sharma to the accused company was ₹5 lacs only. It was alleged that the work assigned to the complainant was not completed by him as a result of which, the company suffered losses of more than ₹50 lacs.

5. It appears that the Trial Court has not based its findings taking into consideration the entire evidence on record adduced by both the parties. Few lines in the cross-examination whereby the appellant informed that he had no relation with Ideal Associates and his son – Bharat Sharma was its proprietor were picked in isolation to conclude that the appellant had no 'locus standi' to institute the complaint case. Other evidence on record i.e. examination-in-chief, statement of the accused under Section 313 Cr.P.C., his evidence by way of DW-1 and other exhibited documents were not taken into consideration to arrive at the positive finding that the appellant had no 'locus standi' to institute the complaint case. No reasons have been assigned by the learned Metropolitan Magistrate for discarding the other oral and documentary evidence on record. The appellant has placed on record various documents including bank account maintained with Nainital Bank Ltd, Vaishali, Ghaziabad wherein he has been shown to be 'proprietor' of Ideal Associates. In the appeal, the appellant has given plausible explanation about the 'confusion' while denying to have any nexus with Ideal Associates. The appellant in the grounds of appeal pleaded that there were two firms Ideal Associates and Ideal Marketing. Dev Prakash Sharma, the appellant / complainant, was the sole 'proprietor' of Ideal Associates whereas his son – Bharat Sharma was the sole 'proprietor' of Ideal Marketing. The learned Presiding Officer did not play active role to get the confusion/ambiguity removed. When in the cross-examination, the

appellant disclosed that his son – Bharat Sharma was the 'sole proprietor' of Ideal Associates, no clarification was sought by the learned Presiding Officer as to how the different versions in the evidence had emerged and which one was correct.

6. In appeal, the appellate Court is empowered to re-appreciate the entire evidence. There is no embargo on the appellate Court in reviewing the evidence upon which an order of acquittal is based. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented.

7. It is pertinent to note that the respondent was even ready and willing to return ₹1.5 lacs to the appellant in full and final settlement of the claim which was not acceptable to the appellant.

8. The impugned judgment ignoring admissible evidence can't be sustained.

9. In the light of above discussion, the appeal is allowed and the matter is remanded to the Trial Court to hear it again and record its findings considering the entire evidence on record. The Trial Court will be at liberty to examine any witness as Court witness to seek clarification (if any). The appellant shall be at liberty to lead additional evidence, if so required.

10. The parties shall appear before the Trial Court on 29.08.2016.

11. Trial Court record (if any) be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

AUGUST 22, 2016 / *tr*