

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 108 OF 2016

M/s. Rach and Shah
Through Sagar Shah.

... Petitioner.

V/s.

Firoz H. Lucknowalla and anr.

... Respondents

Mr. G.C.Jhavari for the Petitioner.
Smt. Veera Shinde, APP. for the State.
Mr. Aditya Mithe with Piyush Pande i/by Kartikaya and Associates for the respondent.

**CORAM : A.S.GADKARI, J.
DATE : 05th Sept. 2018**

P.C.:

1. By the present petition under Section 227 of the Constitution of India the petitioner has impugned the Judgment and Order dated 16.11.2017 passed by the Special Judge (NDPS), City Civil & Sessions Court, Greater Mumbai in Criminal Revision No.937 of 2017 thereby setting aside the Order of issuance of process dated 11.7.2017 passed below Exh.1 in C.C.No. 3173/SS/2016 by the learned Metropolitan Magistrate, 58th Court,

at Bandra, Mumbai under Section 138 read with 141 of the Negotiable Instruments Act,

2. The respondent No.1 is the original accused No.4 in the said complaint filed by the petitioner. It is the contention of the respondent No.1 that, the cheque in question was issued by the company M/s. Party Cruisers Limited on 20.8.2016 however, he had tendered his resignation letter dated 16.8.2016 and therefore, he was not liable for prosecution under Section 138 of the Negotiable Instruments Act. The Revisional Court accepted the contention of the respondent No.1 and allowed the revision.

3. The record indicates that, as a matter of fact, the alleged resignation tendered by respondent No.1 dated 16.8.2016 was forwarded to the Registrar of Companies and accepted by it on 21.3.2017. Form No. DIR-11 i.e. Notice of resignation of a Director to the Registrar of Companies is annexed at page 138 to the present petition which clarifies the said fact, that the resignation of the respondent No.1 was in fact accepted by the Registrar of Companies on 21.3.2017. The said record is maintained by the Department of Corporate Affairs, Government of India. It is the settled position of law that, unless and until the resignation of a Director is accepted by the Registrar of Companies, the same does not come into

effect. Form No. DIR-11 annexed to the petition at Page 138 makes it abundantly clear that, the resignation of respondent No.1 was accepted by the Registrar of Companies on 21.3.2017.

4. In view thereof, according to me, there is no substance in the contention of respondent No.1 that he tendered his resignation prior to issuance of cheque on 20.8.2016 of the said company namely Party Cruisers Limited.

5. In view of the above, the impugned Judgment and Order dated 16.11.2017 passed by the learned Additional Sessions Judge, Greater Mumbai in Revision Application No.937 of 2017 is hereby quashed and set aside. The Order of issuance of process dated 11.7.2017 passed by the learned Metropolitan Magistrate, 58th Court, at Bandra in Criminal Complainant No.3173/SS/2016 is hereby restored.

6. The Petition is allowed in the aforesaid terms.

(A.S.GADKARI, J.)

(This Order is corrected as per the Order dated 24.10.2018 passed in chamber on 24.10.2018 and the corrected order is uploaded as second order.)

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