

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

**CRIMINAL REVISION APPLICATION No. 232 OF 2013**

**WITH  
CRIMINAL REVISION APPLICATION No. 233 OF 2013**

**Shri Watapalli Tulasinga Balaji**

**...Applicant**

**Vs.**

**The State of Maharashtra and Ors.**

**...Respondents**

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Mr. S.P. Kadam for Applicant

Mr. Vijay Gharat for Respondent No.2

Mr. S.R. Shinde -APP for the State

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**CORAM : NITIN W. SAMBRE, J.**

**DATE: MARCH 7, 2018**

**P.C.**

1. Heard the learned counsel for the respective parties.
2. While setting aside the conviction of the Applicant for an offence punishable under Section 138 of the Negotiable Instruments Act, the Appellate Court remanded back the matter to the Learned Magistrate with liberty to lead additional evidence to prove the resolution authorizing one of the directors to tender the complaint and to record the evidence in the said case.
3. Upon perusal of the evidence and observations made in the impugned

order, it is noticed that the original copy of the resolution dated 10<sup>th</sup> January, 2001 appears to have not been produced and the photocopy of the same was tendered at the time of final hearing of the criminal complaint.

4. Even assuming that the original of above said document was submitted by the learned counsel for the Respondent, it is noticed that there is hardly any oral evidence of the complainant, to demonstrate that such authorization was proved by him. The learned counsel for the Complainant relied upon the statement of the accused recorded under section 313 of the Cr.P.C, to demonstrate that the liability is admitted by the Applicant -Accused, in my opinion, the Complainant-present Respondent was required to establish that he is authorized to prosecute on behalf of the Company of which he is claiming to be one of the director.

5. Apart from the above, upon perusal of the statement recored under section 313 of Cr.P.C. it does not reveal that the Applicant has admitted his liability.

6. In my view, the order of remand cannot be justified when it amounts to permitting the Complainant to fill in the serious lacunae in the evidence.

7. In the wake of the above, having noticed that the complaint is not filed by the authorized persons or authorization to prosecute the Applicant-accused is

not proved by the Complainant, the order of remand, in my view, is not justified.

8. As such, order of remand passed by the First Appellate Court in Criminal Appeal Nos. 163 of 2010 and 164 of 2011 decided on 23<sup>rd</sup> March, 2013 by the Sessions Court, Greater Mumbai at Sewree is quashed and set aside. Both these appeals stood restored to the file of the Learned Sessions Judge before whom the parties have agreed to appear on 16<sup>th</sup> April, 2018. The Learned Sessions Judge should make every endeavor to decide the appeals filed by the Accused expeditiously, keeping in mind the observations made hereinabove. Both the revision applications shall stand disposed of accordingly.

**[NITIN W. SAMBRE, J.]**