

2. The applicant is the original complainant. The complaint was filed for offence under section 138 of the Negotiable Instruments, Act, 1888. The total amount involved in the complaint was Rs.5,00,000/-. The trial Court vide judgement and order dated 1.11.2014 convicted the accused for the offence under section 138 of

the Negotiable Instruments Act, 1888 and was sentenced to suffer rigorous imprisonment for one month and to pay Rs.7,00,000/- as compensation to the complainant. The accused as stated above has preferred the appeal before the Sessions Court. During the pendency of the appeal, the accused was directed to deposit an amount of Rs.2,85,000/- which has been deposited by the accused. The complainant had also filed application for adducing additional evidence in accordance with section 391 of the Code of Criminal Procedure, 1973 which was allowed and the trial Court was directed to record evidence to the authorisation of the complainant. Learned counsel for the applicant submitted that the trial Court had rightly convicted the respondent-accused for the aforesaid offence. There was no serious challenge to the issue of authorization of the complainant. There was sufficient documents to prove the authorisation. The authorisation was placed on record.

3. It is further submitted that in the affidavit of evidence tendered before the trial Court, the authorization was proved and therefore, there was no reason to convict the respondent on the issue

of authorization It is submitted that by way of abundant caution, the complainant had preferred application for adducing evidence in accordance with section 391 of the Code of Criminal Procedure 1973 and evidence was also adduced. The trial Court as well as the appellate Court has considered all the aspects involved in the complaint as proved. However, the appellate Court has acquitted the accused only on the ground that authorisation to the complainant was not proved in accordance with law. It is submitted that in the complaint and affidavit in evidence itself, the authorization was established. It is further corroborated by additional evidence recorded by the trial Court. It is submitted that leave be granted.

4. Learned counsel for the respondent submitted that merely tendering documents of authorization is not sufficient. It has to be proved within the provisions of the Evidence Act. It is submitted that opportunity was given to the complainant to adduce additional evidence by allowing application under section 391 of the Code of Criminal Procedure. It is submitted that while allowing the said application, the Court had observed that there is nothing on

record to prove the authorization and thereby the matter was remanded to the trial Court. Inspite of the opportunity given to adduce evidence, nothing was brought on record to substantiate the authorisation. It is submitted that the appellate Court has rightly acquitted the accused and no case is made out for grant of leave. Questions raised by both the parties are required to be considered at final stage. Hence, I pass the following order ;

ORDER

- (i) Leave to file appeal against the judgment and order dated 6.10.2016 passed by the Sessions Court acquitting the respondent is granted.
- (ii) Appeal is admitted.
- (iii) Call for records and proceedings.

[PRAKASH D.NAIK, }