

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO. 565 OF 2019

PETITIONER: Geotech Exploration,
Office at N-132, Reshimbagh, Nagpur,
through its Proprietor, Rajesh s/o
Dhondbaji Ashtankar, Age 53 years,
Occupation: Business.

...V E R S U S...

RESPONDENT : Vikas Gujalwar,
Age Major, Occu: Business,
Director of Gajanan Group of Co., M/s
Gajamam Earthen Resources and
Projects Pvt. Ltd., R/o Plot No. 19, 1st
Floor, Gangadeep Society, Near
Jaiwant Nagar, Manewada, Nagpur.

Shri Sandeep Marathe, counsel for the petitioner.
Shri C.V.Mahurkar, counsel for the respondent.

CORAM : ANIL S. KILOR, J.
DATE : 21st March, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by
consent of the parties.

2. In this appeal, a challenge is raised to the judgment and
order dated 03/12/2018, passed by the learned 25th Joint Civil

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Judge, Junior Division and Judicial Magistrate First Class and Special Court for Section 138 of the Negotiable Instruments Act, Nagpur, acquitting the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 vide Section 255 (1) of the Code of Criminal Procedure.

3. Shri Sandeep Marathe, learned counsel for the appellant has made limited submissions that, as the learned Special Court has held that, the complaint in a format, in which it was filed, was not maintainable in view of the judgment of the Hon'ble Supreme Court of India in the case of *Aneeta Hada V/s M/s Godfather Travels and Tours Pvt. Ltd.*¹. It is submitted that as the company was not made party to the complaint and it was filed through power of attorney holder, the complaint was rejected as not maintainable. He therefore, prays for liberty to move before the Court of Competent Jurisdiction for appropriate relief and may file petition under Section 14 of the Limitation Act 1963, seeking exclusion of the period spent before the other forum. For this purpose, he has placed reliance upon judgment of the Supreme Court of India, in

1 (2012) 5 SSC 661

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the case of *Charanjit Pal Jindal V/s L.N. Metalics*².

4. Shri C.V. Mahurkar, learned counsel for the respondent opposed the said request and submits that company is not a party before this Court and unless a notice is issued to the company, such liberty cannot be granted.

5. To consider the above referred submissions of respective parties, I have perused the impugned judgment and order dated 03/12/2018.

6. The learned Special Court, while acquitting the respondent vide impugned judgment and order dated 03/12/2018, has held that the complaint filed by the appellant under Section 200 of the Code of Criminal Procedure for the offence punishable under Section 138 read with Section 142 of the Negotiable Instruments Act, is not maintainable, in view of the judgment in the case of *Aneeta Hada (supra)*, wherein it was held that in absence of notice to the company which had drawn the cheque, the offence under Section 138 was not made out. It is further held that when drawer of

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the cheque is company, the notice will have to go the company. Hence, the complaint filed against the Director by name, who had signed the cheque not tenable.

7. The Hon'ble Supreme Court of India in the case of *Charanjit Pal Jindal (supra)* by observing that the complaint was not maintainable in view of the decision in *Aneeta Hada*, has observed thus:

"13. However, it will be open for the complainant to move before the court of competent jurisdiction for appropriate relief and may file a petition under Section 14 of the Limitation Act, 1963 seeking exclusion of the period on the ground that the respondent was seeking remedy before the other forum."

8. In this matter, the appellant is seeking similar order as was passed by the Hon'ble Supreme Court of India in the case of *Charanjit Pal Jindal (supra)*.

9. As far as the contention of the respondent is concerned that while granting such relief, the company should be a party to the proceedings, the same cannot be accepted, in view of the fact that if any such fresh proceedings is filed before the appropriate forum by

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making the company as a party, the company will have every right to oppose such proceedings on merit, as well as on limitation. Thus, any order observing that it will be open for the company to move before the Court of Competent Jurisdiction for appropriate relief, will not cause any prejudice to the company.

10. In view of the findings recorded here-in-above, the appeal is **dismissed**, as there is no perversity pointed out in the findings recorded by the learned Special Court that the complaint filed by the present appellant was not maintainable.

11. However, it will be open for the complainant to move before the Court of Competent Jurisdiction for appropriate relief and may seek exclusion of the period seeking remedy before the other forum.

[ANIL S. KILOR, J.]