

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

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 364 OF 2019

M/s. Spavyam (India) Pvt. Ltd.
Through its director :
Mr.Pramod Chandulal Metawala ...Applicant

vs.

M/s. Patel Profiles Pvt. Ltd. & Ors. ...Respondents

Ms.Sadhna Singh – Advocate for Applicant.
Mr.Y.Y.Dabke – APP for the Respondent No.4-State.

CORAM : S. M. MODAK, J.
DATE : 27th MARCH, 2023

P. C. :-

1. Heard learned Advocate for the Applicant–Original Complainant.
2. Though Respondent Nos. 1 and 2 – Accused have been served, they have not appeared. They were convicted by the Court of JMFC – Thane on 11th October, 2017 for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 [“NI Act”]. The Court of Additional Sessions Judge accepted their Appeal as per the judgment dated 27th August, 2019 which is challenged herein.

3. Learned Advocate invited my attention to the various observations in the impugned judgment and also the relevant observations from the trial Court judgment. It is true that when the Complaint is lodged on behalf of an artificial entity, there has to be some authorization for a natural person to give evidence. Either it may be from power of attorney or a resolution. (Para No.11 of the Appellate Court Judgment and Para No.23 of the trial Court judgment). In this case, there is a copy of resolution. It was not considered by the Appellate Court.

4. The amount of cheque was more than the amount of the purchase order. However, the Appellate Court considered only one purchase order (Para No.19). However, there are more purchaser orders and delivery challans. It is considered by the trial Court in Para No.21.

5. The Appellate Court also observed that the witness is not aware that the signature on the cheque belongs to Accused Nos. 2 and 3 (Para No.10). Whereas, my attention is invited to the cross-examination of the Complainant's witness (Para No.18). In fact, he has said that 'he is aware about the signature of Accused Nos.2 and 3. In fact, there are no signatures of Accused Nos. 2 and 3 on

Exhibit-20/a to Exhibit-20/e.’ These documents are not the cheque but the purchase orders.

6. Arguable case is made out. This is an Appeal preferred by the Original-Complainant as per the provisions of Section 378(4) of the Code of Criminal Procedure, 1973 [“Cr.PC.”]. Application for Leave to Appeal is accordingly disposed of. Hence, following order :-

O R D E R

- (i) Special Leave is granted.
- (ii) Appeal is admitted.
- (iii) Call record and proceeding.
- (iv) An action be initiated under Section 390 of Cr.PC. and the learned Magistrate to furnish both of them requisite bail.

7. Matter be kept on **4th May, 2023.**

[S. M. MODAK, J.]