

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-693-2023 (O&M)

Date of decision: 12.05.2023

M/S SHRI SAI RAM TRADING COMPANY AND ANR

...PETITIONER(S)

VERSUS

STATE OF PUNJAB AND ANR

...RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH

Present: Ms. Himani Kapila, Advocate
for the petitioners.

GURBIR SINGH, J. (ORAL)

CRM-12309-2023:-

This is an application under Section 5 of the Limitation Act for
condonation of delay of 101 days in filing the present revision petition.

For the reasons stated in the application, the same is allowed and
delay of 101 days in filing the present appeal is condoned.

CRM-12310-2023:-

This is an application under Section 482 Cr.P.C. for filing of
certified/typed copies of impugned order as well as Annexures P-1 to P-4.

For the reasons stated in the application, the same is allowed and
certified/typed copies of impugned order as well as Annexures P-1 to P-4 are
taken on record.

Main Case:-

Learned counsel for the petitioners submits that the petitioners are
facing the trial in complaint under Section 138 of Negotiable Instruments Act

filed by M/s Behal Commission Shop, which is a partnership firm and the same is not registered. The application for discharge of accused was filed on the ground that the unregistered partnership firm is not a juristic person, so the complaint is not maintainable and the same is hit by Section 69 of the Indian Partnership Act. It is further submitted that there is Partnership Deed Ex.C1 and there are three partners in the respondent Firm but there is no authorization letter attached with the complaint, authorizing the complainant to file the present complaint. Respondent No.2 is not having such shop.

Heard.

In this application, only one ground is taken that complainant firm is not a registered firm. So, in view of Section 69 of the Indian Partnership Act, a registered partnership firm cannot enforce rights arising out of a contract against third party.

The learned trial Court vide impugned order dated 02.09.2022, dismissed the application. The para No.5 of the said order is as under:-

*“The accused has filed the present application for the discharge of accused on the ground that the present complaint is hit by Section 69 of the Indian Partnership Act. It is held by Hon’ble High Court in the case titled as **AV Ramanaiah Vs. M. Shekhar** that the bar contained under Section 69 of the Act of 1932 is intended to prevent an unregistered partnership firm to enforce a right arising out of a contract against third party, and that it is not intended to create any such bar for the purpose of enforcing rights arising out of statutes or for invoking the protection available under Section 138 of NI Act is not hit by bar created by Sub-Section (2) of 69 of the Indian Partnership Act.”*

and the trial Court has rightly ordered the prosecution of accused under Section 138 of Negotiable Instruments Act, which is not hit by bar created under Sub-Section (2) of Section 69 of the Indian Partnership Act. The other points in the revision petition have been raised for the first time in this petition. So the petitioners are restrained from raising the point, which is not raised in the learned trial Court. Without discussing the merits of the case, the case is hereby dismissed.

(GURBIR SINGH)
JUDGE

12.05.2023
kusum

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No