



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

CRIMINAL APPLICATION (APPA) NO. 1266 OF 2023 IN
CRIMINAL APPEAL STAMP NO. 9758 OF 2023

Advance Pesticides, thr. its Authorized Person Akash Mukundrao Kuwar and Ors.

V/s

Bhagwan Deen Krishi Kendra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. P.S. Gawai, counsel for the applicants/appellants.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 12/04/2024.

1. By preferring this application, the applicants seeking leave to file an appeal challenging the judgment passed by 6th Additional Chief Judicial Magistrate, Akola Tq. and District Akola who acquitted the respondent from the charges of commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 in S.C.C. No. 1152/2020.

2. Learned counsel for the applicants invited my attention towards the point framed by the learned trial Court wherein learned trial Court held that cheque was issued in discharge of legal debt and also held that there was a compliance to constitute the offence punishable under Section 138 of the Negotiable Instruments Act, 1981. The respondent is acquitted only on the ground that the valid and legal authority is not filed on record, and therefore, complaint is not maintainable. Learned counsel for the applicant submitted that this procedural defects can be cured at any stage. The appellant has filed the authorization at subsequent time, when

the trial was commenced but the trial Court has not taken it to the consideration and rejected the same evidence and erroneously acquitted the present respondent. He submitted that the appellant has made out the case against the present respondent constituting the offence under Section 138 of the Negotiable Instruments Act. However, only on the technical ground, the respondent is acquitted.

3. In support of his submission, he placed reliance in the case of *M.M.T.C. Limited and another vs Medchl Chemicals and Pharma (P) Ltd. and another reported in (2002)1 SCC 234*, wherein the Hon'ble Apex Court considered the aspect of the authorization which was filed subsequent in time. The Hon'ble Apex Court has held that the authorization which was filed on subsequent time and therefore, the trial Court has acquitted the accused cannot be sustained. It is held that Section 142 of the Negotiable Instruments Act, 1881 provide that complaint under Section 138 can be made by the payee or the holder in due course of the said cheque.

4. It is further held that thus, even presuming, that initially there was no authority, still the Company can, at any stage, rectify that defect. At a subsequent stage the Company can send a person who is competent to represent the company. The complaints could thus not have been quashed on this ground.

5. Leaned counsel for the applicant further placed reliance in the case of *Haryana State Cooperative Supply and Marketing Federation Limited Vs Jayam Textiles and another*

reported in (2014) 4 SCC 704 wherein also, the Hon'ble Apex Court held that procedural defects and irregularities, which are curable, should not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use .

6. In view of the above observation and after perusing the impugned judgment, it reveals that the respondent has acquitted only on the ground that authorization or the valid authority to institute the complaint is not legal. In fact, the appellant has filed the proper authorization at the time of commencement of the trial which is not taken into consideration. Thus, the appellant has made out the arguable points in the present appeal.

7. In view of that, the application for leave to file an appeal deserves to be allowed. Accordingly, I proceed to pass the following order;

The leave is granted to prefer an appeal.

The criminal application is allowed and disposed of.

CRIMINAL APPEAL ST. NO. 9758/2023

On registration of the appeal, notice be issued to the respondent, returnable after three weeks.

[URMILA JOSHI-PHALKE, J.]