



Crl.A.No.607 of 2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

**Crl.A.No.607 of 2014**

M/s.Geniet Garments,  
Represented by its Partner,  
Tmt.S.Latha,  
3/55, Manikarar Thottam,  
Main Road, Pattanam Post,  
Ondipudur, Coimbatore - 641 016.

... Appellant

Vs.

1.Mrs.Kasthuri Udhayakumar  
Proprietrix,  
M/s.OM Enterprises,  
No.66, 3rd B Main, Saraswathi Nagar,  
Vijaya Nagar, Bangalore - 560 040.

2.M/s.Sivjera Sales Corporation,  
Represented by its Vice President,  
Mr.U.Pradeepkumar,  
No.66, 3rd B Main, Saraswathi Nagar,  
Vijaya Nagar, Bangalore - 560 040.



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3.U.Pradeepkumar.

Vice President,

M/s.Sivjera Sales Corporation,

No.66, 3rd B Main, Saraswathi Nagar,

Vijaya Nagar, Bangalore - 560 040.

... Respondents

**Prayer :** Criminal Appeal filed under Section 378 of Criminal Procedure Code 1973 against the judgement and orders dated 31.10.2013 passed in C.C.No.334/2012 by the Judicial Magistrate, Fast Track Court – I, (at Magisterial Level), Coimbatore.

For Appellant : No representation

For Respondent : No representation

### **JUDGEMENT**

Challenging the order of acquittal dated 31.10.2013 passed in C.C.No.334/2012 by the Judicial Magistrate, Fast Track Court – I, Coimbatore, the present appeal is filed by the appellant / complainant.

2. The case of the appellant / complainant in a nutshell is as follows :

i. The second accused M/s.Sivjera Sales Corporation is engaged in



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the business of manufacturing of infant clothes having their registered office at Bangalore. The complainant entered into a Resale - Distribution - Cum - Super Stockiest Agreement dated 08.04.2010 (Ex.P1) with the second accused to sell the clothes. They were also been appointed as super stockiest for the states of Tamil Nadu and Pondicherry as per the agreement dated 08.04.2010. The third accused is the Vice President of the second accused and in-charge of the day to day affairs of the said company. The first accused is the mother of the third accused. At the time of entering into the distributorship agreement, the complainant deposited a sum of Rs.5,00,000/- towards security. Since the goods were not delivered in good condition, the complainant terminated the agreement and requested the third accused to repay the amount of Rs.5,00,000/- deposited by them.

- ii. Accordingly, the third accused issued a cheque (Ex.P2) bearing number 734604 dated 18.09.2011 drawn on Karnataka Bank, Vijayanagar Branch, Bangalore for a sum of Rs.2,90,114/- in favour of the complainant.



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- iii. When the complainant presented the cheque for collection through his bankers, viz., Indian Overseas Bank, Singanallur Branch, Coimbatore, the same was returned on 23.11.2011 for the reason "Insufficient Funds", as is seen from the cheque return memo (Ex.P3).
- iv. Thereafter, the complainant issued a statutory notice dated 08.12.2011 (Ex.P4) to all the accused and the notices sent to Accused No.2 and 3 were returned for the reason 'No such Person and 'No such Firm in this address', respectively. The notice issued to the first accused was returned as 'Not Claimed', as is evidenced by the postal returned cover (Ex.P5).
- v. However, all the accused received the notice sent to their residential address as is evidenced by the postal acknowledgement card dated 12.12.2011 (Ex.P6) and they did not come forward to make good the payment. They did not also send any reply to the notice.
- vi. Therefore, the complainant filed a private complaint before the Judicial Magistrate, Fast Track Court – I, Coimbatore, under Section 200 Cr.P.C. against the accused for the offence punishable



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under Section 138 of the Negotiable Instruments Act (N.I. Act) in C.C.No.334/2012.

- vii. The learned Judicial Magistrate took cognizance of the offence under Section 138 of the Negotiable Instruments Act (N.I. Act) and issued summons to the accused under Section 204 Cr.P.C.
- viii. On the appearance of the accused, the copies of records were furnished to them under Section 207 Cr.P.C. The substance of the accusation made in the complaint was put to the accused and since they pleaded not guilty, the case was posted for trial.
- ix. One witness was examined on the side of the complainant Ex.P1 to Ex.P6 were marked.
- x. The accused, when questioned under Section 313 of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against them, denied of having committed any offence. However, they did not adduce any evidence on their side.
- xi. The learned trial court judge after analysing the oral and documentary evidence on record acquitted the accused under Section 255(1) Cr.P.C. for the offence punishable under Section



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3. No representation for the appellant and respondents.

4. It is seen from the records that the complainant M/s.Geniet Garments is a partnership firm represented by its partner Tmt.S.Latha. However, Tmt.S.Latha had not produced any documents to show that she is either the partner or is authorised to file a case on behalf of the partnership firm. The learned trial court judge had discussed this aspect and observed thus :

*"In addition to the above case, first of all, the complainant shall satisfy the provisions contemplated for taking cognizance of the complaint. Only after the same was satisfied, the burden will shift on the accused to prove his defence. In the instant case the complainant was signed in the complaint on the capacity of Partner of M/s. Geniet Gaarments. Hence, the complainant has to file the necessary document to establish that she is a partner of M/s. Geniet Gaarments. But*



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*the complainant failed to file the necessary documents regarding the power of attorney or board resolution or authorization letter, given by other partner of M/s. Geniet Gaarments. Therefore, the complainant failed to establish her case against the accused beyond reasonable doubt. Our Hon'ble Apex Court in 2007 (1) MLJ (Crl.) Page 1314- The Jawahar Mills Ltd/Vs/ M/s. General Diffutions and another has clearly held that "the manager, Partner, managing partner or director of any other person authorized by the company alone is competent to file the complaint on behalf of the company. The relevant observation in the said statute runs as follows:- The definition of the company under the Negotiable Instruments Act indicates any Body Corporate including a firm indicates that the company as such has to be represented by some human agency in preferring a complaint before the court. The company, though it is a legal entity, does not have soul, mind, body and limbs to walk to the court for preference of a complaint. The dictates of commonsense, practical wisdom, prudence and expedience impels the court in such a situation to allow the company to present a complaint before the court represented by some person connected with the affirms of the company. The person connected with the affairs of the firm, the company, in the*



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*normal run of things may be either its manager, partner, managing partner or director or any other person authorized by the company. It is pertinent to mention here that no doubt a person authorized by the company is competent to file a complaint on behalf of the company" In the instant case Tmt. S. Latha, who has preferred the complaint on behalf of the M/s. Geniet Gaarments, Partnership firm and she has miserably failed to prove that she has been authorized to prosecute on behalf of M/s. Geniet Gaarments, Partnership firm. The filing of the complaint would clearly revealed that it was filed in the individual capacity. Our Hon'ble Apex Court in **CDJ 1997 MHC 1055 P.M. Vijayakumar/Vs/ Monara Chits Pvt Ltd** - has clearly held that " **From the records, the complainant has not produced any documents then to substantiate his claim that he is the managing director or the manager of the firm him. The resolution of the board is not produced. If he is considered as a Manager, then there must be an authority by the board authorizing him to represent the company. Therefore, when the position of the persons is disputed and when the complainant has not produced materials to show his capacity to represent the company or any proof that he is the Managing director then it follows that the complaint is on the face of it is not maintainable**". As*



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*per the dictum laid down by our Hon'ble Apex Court, in the instant case the complainant has not filed any document to show that he is a partner of M/s. Geniet Gaarments. Furthermore, it is obvious to note here that a person authorized by the company alone is competent to file a complaint on behalf of the company or firm". Hence, the complainant failed to properly establish under what capacity the complaint was filed. Accordingly, the complainant had failed to satisfactorily prove the initial burden and the validity of the complaint. Since the complainant has failed to establish his case against the accused beyond reasonable doubt and the accused 1 to 3 are entitled for an acquittal."*

All the observations of the trial court judge is absolutely in order and therefore, I do not see any reason to interfere with the same.

5. In the result,

- i. This Criminal Appeal is dismissed.



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ii. The judgement and orders dated 31.10.2013 passed in C.C.No.334/2012 by the Judicial Magistrate, Fast Track Court – I, (at Magisterial Level), Coimbatore, is confirmed.

**19.06.2024**

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

mtl

To

1.The Judicial Magistrate, Fast Track Court – I, Coimbatore.

2.The Public Prosecutor, High Court, Madras.

3.The Section Officer, Criminal Section, Madras High Court, Chennai.



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**R. HEMALATHA, J.**

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