IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2046-2023 (O&M)
Reserved on:- 20.08.2024
Pronounced on:- 15.10.2024

M/s Sidhi Vinayak Agencies & Anr.

....Petitioners

Versus

M/s Kalatmika Designs Pvt. Ltd. & Anr.

...Respondents

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Ivan Singh Khosa, Advocate
for the petitioners.

Mr. Aayush Gupta, Advocate and
Mr. Aditya Jain, Advocate
for respondent No. 1/complainant.

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AMARJOT BHATTI, J.

1. Petitioners M/s Sidhi Vinayak Agencies, through its Proprietor Ajay Sharma and Ajay Sharma in his personal capacity filed present criminal revision against impugned judgment dated 02.09.2023 and quantum of sentence dated 04.09.2023 passed by learned Additional Sessions Judge, Ludhiana, whereby appeal filed by appellant M/s Sidhi Vinayak Agencies, through its Proprietor Ajay Sharma was dismissed and judgment of conviction and quantum of sentence dated 13.02.2020 passed by learned Judicial Magistrate Ist Class, Ludhiana was upheld and petitioners were sentenced to undergo rigorous imprisonment for a period of two years and to pay compensation of ₹60 lacs for the offence punishable under Section 138 of Negotiable Instruments Act.

2. Brief facts of the case are M/s Kalatmika Designs Private Limited was a private company and was having a business of import and export of yarn and readymade garments. Accused No. 2 Ajay Sharma had earlier represented to complainant that his firm M/s Sidhi Vinayak Agencies was a partnership concern and he and his wife Manju Sharma were its working partners and were incharge of firm and responsible for conduct and business of accused No. 1 firm. Accused firm along with accused No. 2 had been purchasing goods from complainant company and had been making part payments and so there existed current, open mutual running account between complainant and accused firm. According to statement of account of complainant company, there was outstanding amount of more than ₹ 1 crore. In order to discharge partial legal liability, accused No. 2 issued a cheque bearing No. 925347 dated 05.10.2012 for ₹5,29,518/-, drawn on State Bank of Bikaner and Jaipur, Branch Madhopuri Chowk, Ludhiana, in favour of complainant company. However, said cheque was dishonoured due to closure of account. Thereafter, he again issued six cheques and assurance was given to complainant that cheques bearing No. 000298, 000299 and 000300 dated 25.10.2012 for ₹20 lacs each would be honoured on presentation on 25.10.2012. The complainant presented above said three cheques with his banker, but same were dishonoured vide memo dated 26.10.2012 with remarks "Payment Stopped". Thereafter, legal notice dated 05.11.2012 posted on 20.11.2012 was sent, calling upon accused to make payment of amount mentioned in cheques within 15 days from the date of receipt of legal notice. Despite service of said legal notice, accused did not make

payment within the stipulated period. Thereafter, complaint was filed.

3. After leading preliminary evidence by complainant through its authorized agent Sh. Yogesh Malhotra, accused were ordered to be summoned to face trial for the offence punishable under Section 138 of Negotiable Instruments Act, vide order dated 21.01.2013.

4. Finding prima-facie case against accused for offence punishable under Section 138 of the Act, notice of accusation was served upon accused No. 2, to which he pleaded not guilty and claimed trial and accordingly, case was fixed for evidence of accused.

5. In order to prove its case, complainant company initially examined in chief its Authorized Agent Sh. Yogesh Malhotra as CW-1 and thereafter, examined Deepak Bhandari, authorized vide Resolution dated 05.08.2014 as CW-1 and Ranjit Singh, Clerk, Excise and Taxation Department as CW-2 and thereafter, closed the evidence.

6. Statement of accused was recorded under Section 313 Cr.P.C. to which he pleaded innocence and false implication.

7. In defence, accused examined Shyam Babu Parsad, Clerk of Vijaya Bank (now known as Bank of Baroda) as DW-1, Singhasan Rani, Clerk, Office of Registrar Companies, Punjab & Chandigarh as DW-2 and Ankit Katyal, Single Window Operator, PNB as DW-3 and closed the evidence.

8. After hearing arguments advanced by learned counsel for complainant and learned counsel for accused, learned trial Court convicted accused No. 2 Ajay Sharma and sentenced under Section 138 of Negotiable Instruments Act vide judgment of conviction and order on quantum of

sentence dated 13.02.2020, as referred above. Feeling aggrieved of this judgment of conviction and order of sentence, appeal was filed by petitioner/convict No. 1 through its Proprietor Ajay Sharma and after hearing both the parties, learned Appellate Court upheld the aforesaid judgment passed by learned trial Court and dismissed the appeal vide judgment of conviction and order on quantum of sentence dated 02.09.2023/04.09.2023. Feeling aggrieved, present criminal revision has been filed by petitioners/convicts No. 1 and 2.

9. I have heard arguments advanced by learned counsel for petitioners/convicts and learned counsel for respondent No. 1/complainant and have gone through the record of both the Courts carefully.

10. Learned counsel for petitioners argued that judgment of conviction and order of sentence dated 13.02.2020 passed by learned trial Court is not on sound footing and appeal preferred against this judgment of conviction and order of sentence was wrongly dismissed by passing impugned judgment dated 02.09.2023 and order of sentence dated 04.09.2023 by learned Additional Sessions Judge, Ludhiana. Material facts have been ignored by learned trial Court as well as Appellate Court. It is pointed out that as per the case of complainant M/s Kalatmika Designs Pvt. Ltd., entire liability to pay any amount was towards M/s Sidhi Vinayak Agencies being a partnership concern. Ajay Sharma petitioner was allegedly partner in aforesaid firm alongwith his wife Manju Sharma. However, partnership firm was not impleaded as an accused. Therefore, complaint filed by complainant was not maintainable. Proprietorship concern cannot be tried under Section 138 of Negotiable Instruments Act

for alleged legal debt of partnership firm unless there was categoric assignment of legally enforceable debt by partnership concern towards proprietorship. In support of this argument, learned counsel for petitioners/convicts has relied upon the judgment of **Bombay High Court** in **Criminal Appeal No. 797 of 2018, decided on 08.07.2019**, titled ***"Suresh Nakra Versus Murugesan Adimoolam & anr."***.

Learned counsel for petitioners further raised the issue that complaint was not filed by authorized person on behalf of company. At the time of filing of complaint Yogesh Malhotra was authorized to file this complaint by the Board of Resolution against partnership firm of petitioner No. 2 Ajay Sharma and his wife Manju Sharma. Subsequently, Yogesh Malhotra left. Learned counsel for petitioners referred to testimony of Singhasan Rai, Clerk, Office of Registrar Companies, Punjab & Chandigarh examined as DW-2 who has produced on record Certificate of Incorporation, Memorandum of Articles and Article of Association as Ex.DW2/1 to Ex.DW2/3. As per this record, Sunil Kumar Puri and Ashok Kumar Soni were recorded as Directors of company. There was no reference of Deepak Bhandari as one of the Director. Later on Board of Directors passed resolution in favour of Deepak Bhandari, without there being signatures of any of the Directors. Later on even Deepak Bhandari was disqualified from being a Director by signatory authorities w.e.f. 01.11.2016 for a period of five years, for not filing annual returns after 2011-12 for a continuous period of three years. No fresh resolution by Board of Directors was passed to authorize any other person to represent company. Learned counsel for petitioners/convicts has relied upon the judgment **Supreme Court of India** in **2005(1) SCC 212**, case titled "***M/s Dale and Carrington Invt. (P) Ltd. and another Versus P. K. Prathapan and others***", relevant para No. 15 runs as under :-

> *"15. At this stage it may be appropriate to consider the legal position of Directors of companies registered under the Companies Act. A company is a juristic person and it acts through its Directors who are collectively referred to as the Board of Directors. An individual Director has no power to act on behalf of a company of which he is a Director unless by some resolution of the Board of Directors of the Company specific power is given to him/her. Whatever decisions are taken regarding running the affairs of the company, they are taken by the Board of Directors. The Directors of companies have been variously described as agents, trustees or representatives, but one thing is certain that the Directors act, on behalf of a company in a fiduciary capacity and their acts and deeds have to be exercised for the benefit of the company. They are agents of the company to the extent they have been authorised to perform certain acts on behalf of the company. In a limited sense they are also trustees for the shareholders of the company……"*

Learned counsel for petitioners/convicts has also put reliance on the judgment of **Delhi High Court** cited in **1991 AIR (Delhi) 25**, case titled "***M/s Nibro Limited Versus National Insurance Co. Ltd.***", relevant para No. 25 runs as under :-

> *"25. It is well-settled that under Section 291 of the Companies Act except where express provision is made that the powers of a company in respect of a particular matter are to be exercised by the company in general meeting in all other cases the Board of Directors are entitled to exercise all its*

powers. Individual directors have such powers only as are vested in them by the Memorandum and Articles. It is true that ordinarily the court will not unsuit a person on account of technicalities. However, the question of authority to institute a suit on behalf of a company is not a technical matter. It has far reaching effects. It often affects policy and finances of the company. Thus, unless a power to institute a suit is specifically conferred on a particular director, he has no authority to institute a suit on behalf of the company. Needless to say that such a power can be conferred by the Board of Directors only by passing a resolution in that regard."

By relying upon the aforesaid judgments, learned counsel for petitioners/convicts pointed out that complaint has not been filed by duly authorized competent person on behalf of complainant company.

Learned counsel for petitioners further raised the issue that there was no legally enforceable debt against the signatory of impugned cheques i.e. proprietorship firm. Debt was only towards partnership firm. Therefore, petitioners were not liable to pay any amount. Moreover, during trial respondent No. 1/complainant failed to produce original account book, ledger, bills, ITRs to prove legally enforceable debt towards petitioners. On the other hand, petitioners filed criminal complaint under Section 420, 466, 467, 468, 471 read with Section 120-B of IPC against Deepak Bhandari, Director M/s Kalatmika Designs Pvt. Ltd. and others. Copy of complaint is Ex.DX/A. Respondent No. 1/complainant had placed on record computerized bills/VAT invoices Ex.C6 to C99, without producing original bills/VAT invoices alongwith books of account and ledger. Therefore, documents relied upon by respondent No. 1/complainant cannot be relied upon. Statement of account of complainant company Ex.C5 cannot be looked into. It is wrongly alleged that said statement was signed by petitioner No. 2. Original of said statement of account was never produced in Court, therefore, same cannot be relied upon.

Lastly, learned counsel for petitioners pointed out that during the pendency of appeal before learned Additional Sessions Judge, Ludhiana, applications were filed from time to time and without passing any final order on said applications, appeal was dismissed by passing impugned judgment dated 02.09.2023/04.09.2023. Therefore, judgment of conviction and order of sentence passed by Courts below are liable to set aside, by accepting present criminal revision.

11. Learned counsel representing respondent No. 1/complainant argued that facts of case and points raised by learned counsel for petitioners/convicts were rightly considered by the Courts below and they were rightly held guilty under Section 138 of Negotiable Instruments Act and were sentenced thereunder. Present revision preferred by petitioners is without merits and has been filed only to delay the proceedings. It is pointed out that earlier complaint was filed by respondent No. 1 against accused firm, being a partnership concern in which Ajay Sharma and Manju Sharma were partners. In fact, petitioners firstly represented that petitioner/convict firm is a partnership firm and later on represented as a proprietorship concern of Ajay Sharma. Therefore, complaint was accordingly filed.

Objection raised by learned counsel for petitioners that complaint was not filed by a competent authorized person is also without merits. At the time of filing of complaint, there was resolution passed in favor of Yogesh Malhotra dated 28.10.2012, Ex. C3 and accordingly, complaint was filed by company through its authorized agent Yogesh Malhotra. Later on, Yogesh Malhotra was disqualified and thereafter, fresh resolution was passed by Board of Directors in favour of one of the Directors Deepak Bhandari, which is Ex. C4. Accordingly, Deepak Bhandari stepped into the witness box as CW-1 to prove the facts detailed in complaint. Therefore, objection raised by learned counsel for petitioners is without any basis.

In fact, all the facts narrated in complaint are duly proved on record. There is ample evidence on record to show that petitioners were purchasing goods from complainant company from time to time. They also made part payment and accordingly, books of account were maintained. At the time of filing of complaint, a sum of more than ₹1 crore was due towards petitioners and in discharge of their partial liability, convict No. 2 had issued a cheque No. 925347 dated 05.10.2012 for a sum of ₹5,29,518/- of State Bank of Bikaner and Jaipur, Branch Madhopuri Chowk, Ludhiana but the same was dishonored with remarks "account closed". Therefore, petitioners again issued six cheques including cheques in dispute Ex. C101 to C103, all dated 25.10.2012 for a sum of ₹20 lakhs each and as per assurance of petitioners, cheques were presented for encashment on 25.10.2012 but same were dishonored vide memos dated 26.10.2012 with remarks "payment stopped". Said memos are Ex. C104 to C106. Petitioners merely denied their liability as well as signatures on cheques. There is no concrete evidence on record to show that said cheques were issued by petitioners in favor of respondent No.1 as security. From the evidence led by respondent No. 1/complainant, it is clearly established that aforesaid cheques were issued in discharge of their legal liability in part but the same were dishonored, as a result, legal notice dated 05.11.2012 Ex. C107 was issued and posted on 20.11.2012. Postal receipts are Ex. C108 to C110. Despite service of legal notice, no reply was given and ultimately complaint was filed on 13.12.2012. Revision filed by petitioners is without merits and same deserves dismissal.

12. I have considered the arguments and have gone through the record with able assistance of learned counsel for petitioners and learned counsel representing respondent No. 1. As per the facts narrated in complaint, M/s Kalatmika Designs Private Limited filed complaint under Section 138 of Negotiable Instruments Act through its authorized agent Yogesh Malhotra against M/s Sidhi Vinayak Agencies, through its owner Ajay Sharma as convict No. 1, and Ajay Sharma, being owner of proprietorship concern, as convict No. 2, who are petitioners in the present criminal revision. It is the case of respondent No. 1/complainant that M/s Sidhi Vinayak Agencies is a partnership concern in which Ajay Sharma and his wife Manju Sharma were partners and they were responsible for conduct and business of convict No. 1 firm. They purchased goods from complainant company by making part payments and there existed current open mutual running account between them. In discharge of partial legal liability, convict No. 2 issued cheque No. 925347, dated 05.10.2012, for a sum of ₹5,29,518/- of State Bank of Bikaner and Jaipur, Branch Madhopuri Chowk, Ludhiana, which was dishonored as account was closed.

Thereafter, he again issued six cheques and told complainant to present cheques No. 000298, 000299, 000300, all dated 25.10.2012 for a sum of ₹20,00,000/- each, with assurance that cheques would be honoured on presentation on 25.10.2012. Said cheques are Ex. C101 to C103. However, on presentation, cheques were dishonored with remarks "Payment Stopped" vide memos dated 26.10.2012, which are Ex. C104 to C106, and thereafter, legal notice was served upon petitioners/convicts. Postal receipts are also placed on record. Despite legal notice, when no payment was made within stipulated time period, complaint was filed on 19.07.2013, which is well within the period of limitation.

13. Learned counsel for petitioners firstly raised the issue that present complaint has been filed against M/s Siddhi Vinayak Agencies through its owner Ajay Sharma, who is arrayed as accused No.2, but in the complaint it was claimed that M/s Sddhi Vinayak Agencies was a partnership concern in which Ajay Sharma, along with his wife Manju Sharma were partners. There is nothing on record to show that partnership concern ever assigned its liability to proprietorship concern. I have considered aforesaid objection raised by learned counsel for petitioners. Firstly in present revision, Ajay Sharma took specific stand that M/s Sidhi Vinayak Agencies is his sole proprietorship. Present petitioners filed a complaint against Deepak Bhandari, Director of M/s Kalatmika Designs Pvt. Ltd. Ex. DX/A, where in said complaint filed in the year 2017, it was alleged that Ajay Sharma is sole proprietor of M/s Sidhi Vinayak Agencies. Present petitioners did not clarify at any stage for how long their concern was a partnership concern and when it converted into sole proprietorship

concern. In fact, constitution of petitioner No. 1 concern as partnership or sole proprietorship is matter of their internal arrangement and an outsider dealing with it is not supposed to know said details. Even now petitioners remained silent on this point. It is not the case that respondent No.1/complainant knew about its constitution and for ulterior motive, showed its ignorance. Therefore, such an objection raised by learned counsel for petitioners does not hold any ground.

14. Petitioners/convicts further raised issue that complaint was not filed by M/s Kalatmika Designs Pvt. Ltd. through authorized person. This objection raised by learned counsel for petitioners is without any basis in the presence of evidence led by complainant. As per the facts narrated in complaint, initially complaint was filed by M/s Kalatmika Designs Pvt. Ltd. through its authorized agent Yogesh Malhotra, who was holding Certificate of Resolution dated 28.10.2012 in his favor, which is Ex. C3. As per record, legal notice is dated 05.11.2012 Ex. C107 and as per postal receipts, it was sent on 20.11.2012 and ultimately, complaint was filed on 13.12.2012. Therefore, Yogesh Malhotra was duly authorized by complainant company to file and pursue present complaint. Initially, Yogesh Malhotra, being authorized agent stepped into witness box as CW1 and filed his affidavit on 29.08.2013. His cross-examination was deferred. In the meantime, Yogesh Malhotra was disqualified, and thereafter another resolution was passed in favor of Deepak Bhandari, one of the Directors of company dated 05.08.2014, which is Ex. C4. Therefore, Deepak Bhandari as CW1 was duly authorized to pursue complaint and depose in Court on behalf of complainant company. Apart from this, petitioners/convicts had

examined Sham Babu, Clerk, Vijaya Bank (now Bank of Baroda) as DW1, who has proved on record documents regarding raising of loan by M/s Kalatmika Designs Pvt. Ltd. which are Exs. DB, DC, DD and DE, in which Ashok Kumar and Deepak are shown as Directors of company. Therefore, facts of the case are proved on record by authorized agent on behalf of complainant company.

15. Respondent No. 1/complainant has filed this complaint under Section 138 of Negotiable Instruments Act. Therefore, onus is on complainant to establish that cheques in dispute were issued in discharge of legally enforceable debt. To prove this fact, Deepak Bhandari, who is one of the Director of complainant company as CW-1 proved on record computerized bills/VAT invoices Ex. C6 to C99 vide which petitioners/convicts had purchased material from respondent No.1/complainant company. It has come in cross-examination of Deepak Bhandari as CW-1 that original bills were handed over to purchaser and copies are retained. Said bills are computerized bills, therefore, hard copies of same were not prepared. The deposing witness has also placed on record statement of account of complainant company regarding running account of M/s Sidhi Vinayak Agencies for the period 01.04.2011 to 31.03.2012, Ex. C5, showing entries of debit, credit and balance amount which was due towards complainant company. Aforesaid statement of account shows closing balance of ₹1,88,27,283.44/- as on 31.03.2012 and at the bottom, it is signed by proprietor of M/s Sidhi Vinayak Agencies. During the course of arguments, learned counsel for petitioners disputed the aforesaid statement of account for the year 2011-12 and also disputed signatures of

the petitioner for M/s Sidhi Vinayak Agencies. In order to prove business dealings between aforesaid concerns, learned counsel for complainant had examined Ranjit Singh, Clerk, CW2, who produced on record VAT returns of M/s Sidhi Vinayak Agencies for the period 01.04.2011 to 31.03.2012 alongwith detail of VAT-23, showing details of material purchased from different purchasers, including M/s Kalatmika Designs Pvt. Ltd. Therefore, stand taken by learned counsel for petitioners that M/s Kalatmika Designs Pvt. Ltd. and M/s Sidhi Vinayak Agencies were having no dealings with each other does not hold any ground. In fact, record clearly indicates that petitioners were making purchases from time to time on credit basis and some payments were also made, as a result, there was running account and as per statement of account of complainant company maintained during the course of business, Ex. C5, petitioners/convicts were having liability of more than ₹1 crore towards respondent No. 1/complainant company.

Respondent No. 1/complainant company has proved on record three cheques, all dated 25.10.2012, each for a sum of ₹20,00,000/-, Ex. C101 to C103, bearing signatures of petitioner No. 2 as proprietor of M/s Sidhi Vinayak Agencies. Mere denial of signatures does not hold any ground. There is no specific stand that aforesaid cheques were issued by way of security. Considering the aforesaid bills/VAT invoices, statement of account and VAT returns, it clearly indicates that cheques were issued in discharge of legally enforceable debt. Moreover, as per Section 139 of Negotiable Instruments Act, there is a presumption in favor of holder of cheque, which is rebuttable presumption. However, in order to rebut the said presumption, no evidence is led by petitioners/convicts. There is no effort on the part of petitioners to place on record their own statement of account to show that they had no dealings with respondent No. 1/complainant company or that they had discharged their entire liability. Therefore, petitioners/convicts failed to rebut presumption in favour of holder of cheques. Perusal of impugned judgment dated 02.09.2023, on arguments on quantum of sentence clearly indicates that present petitioner during appeal admitted his liability when he stated that due to some financial crisis, he could not make payment and also stated that he is ready to make part payment of ₹10 lakhs and prayed for lenient view from first Appellate Court. Thus, petitioners/convicts admitted their liability towards respondent No. 1/complainant.

16. Learned counsel for petitioners also raised objection that various applications were filed during pendency of appeal and same were not disposed of. As per record, present petitioners filed two applications, one for producing original of statement of account Ex. C5 and second application for admission and denial as to whether Ex. C5 is original document or attested copy. In the case in hand, statement of account Ex. C5 is proved on record when statement of Deepak Bhandari was recorded as CW1. This witness was cross-examined at length and in case there was any objection to exhibition of this document as Ex. C5, that could have been raised at that point of time. Therefore, aforesaid applications does not help the case of petitioners in any manner. Apart from this, there is another application filed to comply with provisions of Section 148(3) of Negotiable Instruments Act and another application filed by complainant to vacate the order of suspension of sentence. Aforesaid applications are disposed of

automatically when the appeal was finally adjudicated by Appellate Court. Therefore, no separate order was required to be passed. Lastly, there is another application for leading additional evidence to prove an independent auditor report on financial status of M/s Kalatmika Designs Pvt. Ltd. During the course of arguments before this Court, learned counsel for petitioners has failed to explain the relevance of aforesaid report for final adjudication of matter in controversy. In light of this, merits of the case are not going to be effected, therefore, I do not find any reason to remand back the case to the Appellate Court for adjudication of aforesaid application. However, Appellate Court should have passed appropriate orders at the time of final adjudication of appeal.

17. Considering the facts of case and evidence on record, in my opinion, judgment of conviction and order on quantum of sentence dated 13.02.2020 passed by trial Court and confirmed by Appellate Court by passing impugned judgment dated 02.09.2023 and order on quantum of sentence dated 04.09.2023 do not require any interference and same is accordingly upheld, consequently, criminal revision preferred by petitioners is dismissed.

Pending application(s) if any, also stands disposed of.

15.10.2024 **(AMARJOT BHATTI)**
lalit **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No