

M/S S.M.Builders Vs. M/S Placid Constructions Pvt. Ltd. and Another

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Court : Punjab and Haryana

Decided On : Aug-04-2014

Appellant : M/S S.M.Builders

Respondent : M/S Placid Constructions Pvt. Ltd. and Another

Judgement :

CRM-A-29-MA of 2014 -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CRM-A-29-MA of 2014 Date of decision:04.08.2014 M/s S.M.Builders Applicant-Appellant(s) Versus M/s Placid Constructions Pvt. Ltd. and another Respondent(s) CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH1 Whether Reporters of the local papers may be allowed to see the judgment?. 2) To be referred to the Reporters or not?. 3) Whether the judgment should be reported in the Digest?. Present: Mr. Gurmeet Singh Saini, Advocate, for the applicant. ***** PARAMJEET SINGH, J.

(ORAL) The instant application has been filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the impugned judgment dated 24.10.2013 passed by learned Judicial Magistrate Ist Class, Ferozepur whereby complaint filed by applicant under Section 138 of the Negotiable Instruments Act has been dismissed and respondent has been acquitted of the notice of accusation issued against him. Brief facts of the case are that a complaint was filed by the applicant-complainant under Section 138 of the Negotiable Instruments PARVEEN KUMAR201408.20 13:31 I attest to the accuracy and integrity of this document CRM-A-29-MA of 2014 -2- Act, 1881 alleging that accused purchased building material from the

complainant-firm vide bill No.201 dated 31.08.2010 for an amount of ` 2,74,245/-, bill no.365 dated 12.09.2010 for an amount of ` 1,45,464/- and bill no.366 dated 25.09.2010 for an amount of ` 2,08,364/- and the accused had paid an amount of ` 1,10,000/- only in cash and in order to discharge his partial liability regarding the above said outstanding amount the accused issued cheque no.000766 dated 5.9.2010 and cheque no.001119 dated 24.09.2010 drawn from his account bearing No.6330201100055 at Bank of India, Mukatsar. On the assurance given by the accused, the complainant presented the said cheques for clearing to the banker of the accused but the said cheques were dishonoured by the banker of the accused vide separate memos dated 22.12.2010 and 16.12.2010 with the remarks insufficient funds. and were returned alongwith the memos to the complainant. As required under Section 138 (b) of the Negotiable Instruments Act, the complainant made a demand from the accused for payment of the aforesaid amount of cheque by a notice dated 07.01.2011 through his counsel namely Sh. V.D.Madhar Advocate within 30 days of the receipt of information by the complainant from his bank regarding the return of the cheques as unpaid. The accused have intentionally evaded the service of notice. He further pleaded that as required under Section 138(c) of the aforesaid Act, the accused was given a time of fifteen days from the receipt of the said notice, to make the payment of the amount of the said cheque to the PARVEEN KUMAR201408.20 13:31 I attest to the accuracy and integrity of this document CRM-A-29-MA of 2014 -3-complainant being the payee of the aforesaid chqueue. The accused failed to make the payment for the amount of the cheque in question to the complainant and has thus committed offence punishable under Sections 138/142 of the Negotiable Instruments Act. On the basis of preliminary evidence, notice of accusation for commission of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 was served upon the accused- respondent to which he pleaded not guilty and claimed trial. The complainant, in order to prove his case, examined himself as CW1. Thereafter, statement of the accused-respondent under Section 313 Cr.P.C. was recorded wherein he pleaded complete innocence and false implication. The trial Court, after appreciating the evidence, acquitted the respondents of the notice of accusation served against him vide impugned judgment dated 24.10.2013. Hence, this application for grant of leave to appeal. I

have heard learned counsel for the applicant and gone through the impugned judgment. The trial Court, after appreciating the evidence on record, observed as under:-

6. After hearing the arguments and having gone through the file I find there are two points of determination, to be decided for the proper adjudication of the case. There are as follows: PARVEEN KUMAR201408.20 13:31 I attest to the accuracy and integrity of this document CRM-A-29-MA of 2014 -4- 1) Whether the complainant was entitled to file the present complaint?. 2) Whether the accused has issued cheques in question against the partial liability to pay his debt?. Point 1 7. The onus to prove the first point was on the complainant and to prove this point the complainant has not lead any evidence. Argument of Id. Counsel for the accused carries weight that the complainant filed the said complaint being the partner of the firm but she did not place any document to this effect. Even in her cross examination she has admitted that she was not the partner of the firm M/S SM Builders Ichhe Wala Road Ferozepur city. Perusal of the affidavit Ex.CW1A reveals that in this affidavit she is representing herself as the proprietor of the firm. No evidence on record is showing her as proprietor of the said Firm. Therefore, the complainant can not produce any document to clarify that whether she is the 'partner' or the 'proprietor' of the said Firm. At one place she is mentioning herself as a partner of the Firm and at another place she is claiming herself the proprietor of the firm. She has not placed any proof regarding her locus standi to file the present complaint. And thus she is not entitled to file the present complaint. I draw support from the judgment in case title Millind Shripad Chandurkar V. Kalim M. Khan and another,. AIR 2011 SC769.. Wherein it has been held by the hon'ble Supreme Court that Complaint filed claiming himself to proprietor of PARVEEN KUMAR201408.20 13:31 I attest to the accuracy and integrity of this document CRM-A-29-MA of 2014 -5- firm. No evidence however produced to show that he was sole proprietor of firm. Complaint dismissed.

. Though it is a settled law that the criminal law can be set into motion by any person but that person must have a specific identity. In a case titled as:- Associated Cement Co. Ltd. Keshwanand (1998) (1) CC687