(2010) 09 P&H CK 0461

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 11 of 2009

Balaji Agencies Pvt. Ltd.	APPELLANT
Vs	
Samudra Ropes Pvt. Ltd.	RESPONDENT

Date of Decision : 02-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 391, 465
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2011) 4 CivCC 515 : (2011) 2 RCR(Criminal) 625

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.A. Britto, J.—This is a Complainant''s appeal and is directed against the judgment dated 26-9-2008 of the learned Sessions Judge, Panaji by which the accused have been acquitted u/s 138 of the Negotiable Instruments Act, 1881.

2. The Complainant is a Private Limited Company, and according to the learned Counsel, it consists of two Directors only. The controversy between the parties boils down to the lack of authority of the Managing Director, to file the complaint, pursuant to the Resolution dated 1-2-2000 which was produced at Exh.7 and which reads as follows:

Resolved That Mr. Vijay M. S. Usgaonkar, the Managing Director of the Company be and is hereby authorised to depose and conduct proceedings on behalf of the Company in the matters filed by the Company under Negotiable Instruments Act.

For Sri Balaji Agencies Private Limited

Sd/- CHAIRMAN

3. There is no dispute that the accused-Company had issued to the Complainant-Company four cheques, all dated 1-2-2000, the first three in the sum of Rs. 5,00,000/- each, and the fourth in the sum of Rs. 2,48,715/- which cheques

when presented for payment were returned dishonoured for insufficiency of funds, and a notice sent to the accused was not complied with. The complaint was filed by Vijay M. S. Usgaonkar, the Managing Director, who was examined in support of the complaint at the stage of Section 200 as well as in the course of the trial.

4. The learned Sessions Judge has concluded that the said Resolution could not be taken as evidence of the fact that PWl/Vijay Usgaonkar was authorised to depose in the matter as the said Usgaonkar was authorised only to depose and conduct the proceedings on behalf of the Complainant in the matters which would be filed by the Company under the Negotiable Instruments Act. The learned Sessions Judge has noted that the said Resolution does not say that Mr. Sardessai is authorised to file the complaint on behalf of the Company. The learned Sessions Judge then referred to the case of Shri Ashok Bampto Pagui Vs. Agencia Real Canacona Pvt. Ltd. and State, wherein it was held by this Court that a Director as an individual Director has no power to act on behalf of the Company, as he is only one of a body of directors called the Board of Directors and he alone has no power, except such as may be delegated to him, by the Board of Directors or given to him by the articles of association of a company. The said decision is in consonance with the views expressed in three decisions, namely, those of Madras High Court, Andhra Pradesh High Court and Delhi High Court, mentioned therein, and which decisions are in accordance with the view held by the Apex Court in Dale and Carrington Invt.(P) Ltd. and Anr. v. P. K. Prathapan and Ors. also mentioned therein. The learned Sessions Judge had also referred to the case of M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, and held that the said decision referred only to complaints which were quashed at the threshold and not finally after trial. The learned Sessions Judge also referred to the case of Escorts Limited v. Sai Autos and others(1991 (72) Com Cas 483) and held that the only way to prove that a particular resolution was passed at a meeting of the board of directors of a Company was to produce the minutes book in which the said resolution was recorded. The learned Sessions Judge also referred to the case of Apple Valley Resort v. H. P. State Electricity Board(2004 (118) Comp Cas 328) and held that the question of authority to institute an action on behalf of the company is not a technical matter and it has far-reaching effects and it often affects policy and finances of the Company and therefore, unless a power to institute an action is specially conferred on a particular director, he would have no authority to bring an action on behalf of the company. Referring to Swastic Coaters Pvt. Ltd. v. Deepak Brothers (1977 (89) Comp Cas 564) the learned Sessions Judge held that a director of the company cannot be said to be a holder in due course and one of the directors can present a complaint if there is a proper authorisation in favour of such a director.

5. This appeal has been filed by the Complainant-Company pursuant to a Resolution dated 1-11-2008 by which the said Shri Usgaonkar, Managing Director of the Company has been authorised "to file appeal against acquittal/appropriate

legal proceedings before higher judicial authorities against the judgment dated 26-9-2008 passed in Criminal Appeal No. 31 of 2004". The Resolution also "ratifies all acts done by Mr. Vijay M. S. Usgaonkar in connection with OA Case No. 147/2000/B i.e. all acts including filing of the said complaint, deposing on behalf of the Company in the said complaint, defending Criminal Appeal No. 31 of 2004 and appointing advocate".

6. Shri N. Sardessai, learned Counsel appearing for the Complainant, firstly submits that the expression "conduct proceedings on behalf of the company" in the Resolution dated 1-2-2000 should be construed as authorising the said Usgaonkar to file complaint on behalf of the Company. In my view, such a construction cannot be placed on the said expression. The Resolution dated 1-2-2000 did not at all authorise the said Usgaonkar to file a complaint on behalf of the Company, and, therefore the complaint filed could not have been entertained by the Court, as a complaint filed by the payee and being so, the acquittal on the basis of the same could not be faulted. It may be noted that when one person gives power or authority to another, such powers/authority are always construed strictly.

7. Shri Sardessai, learned Counsel has also filed an application u/s 391 of the Code of Criminal Procedure, 1973) to produce another Resolution dated 28-5-1998, which according to the learned Counsel, although the said Resolution was in existence, it was not produced by the Complainant in the trial of the case. By this Resolution, the said Shri Usgaonkar, Director of the Company was authorised "to appear and to represent Company before any court or any government authorities and to file, commence, persecute or enforce and defend, answer or depose legal proceedings (whether civil or criminal), suits, claims, complaints to the affairs of the company and for that purpose to execute, sign, verify and present any documents, pleading, submissions or other instruments and to make statements on oath or otherwise in relation to the company and to appoint any pleader, advocate, solicitor, agent for that purpose and to obtain legal advise in matters affecting the business of the company". Learned Counsel has then referred to Section 391 of the Code and has submitted that in the interest of justice the power to allow the Complainant to produce the said Resolution should be exercised. Learned Counsel has placed reliance on an unreported judgment of this Court dated 15-6-2010 In Criminal Miscellaneous Application No. 171 of 2008 in the case of Globe Trotters International v. Joseph Fernandes and Anr. wherein this Court had allowed the Complainant to produce a receipt and a letter dated 24-3-2004 with the view to overcome the plea of limitation on which the acquittal was based. The learned Single Judge of this Court in allowing the said applicaton had referred to the case of Rajeshwar Prasad Mishra v. West Bangal and Anr. AIR 1965 SC 1887 wherein the Apex Court had, inter alia, observed that the power u/s 391 of the Code had to be exercised sparingly and only in suitable cases, and once such action was justified there was no restriction on the kind of evidence which could be received whether formal or substantial. The Apex Court had also stated that it must not, however,

be received in such a way as to cause prejudice to the accused, as for example, it would not be received as a disguise for a retrial or to change the nature of the case against him and the order must not ordinarily be made if the prosecution had a fair opportunity and has not availed of it unless the requirements of justice dictate otherwise.

8. On the facts of this case, there is no good reason given on behalf of the Complainant as to why the Resolution dated 28-5-1998 was not produced before the trial Court or for that matter before the first appellate Court when the issue of authority of the said Shri Usgaonkar was raised. Allowing the said application and the production of the said Resolution would necessarily involve giving a further opportunity to the accused for cross examination as well. The Complainant could have produced the said Resolution before the Courts below. No good reason has been assigned for its non production. The Application is nothing short of an attempt for retrial and change the nature of the case against the accused. A fundamental defect of a complaint not being filed by the payee cannot be allowed to be cured after the acquittal of the accused. Therefore, this is not a fit case to allow the production of the said Resolution after the accused has been acquitted.

9. Shri Sardessai, learned Counsel has next submitted that the Resolution dated 1-11-2008 now ratifies the filing of the complaint, and, therefore the defect of lack of authority would stand cured. In my view, it is rather too late in the day to produce such a notification ratifying the act of filing the complaint by a wrong person. Such a ratification ought to have been produced by the Complainant before his evidence was completed and in any event before the close of the case of the Complainant and before the accused entered his defence and certainly not after the accused has been acquitted. Learned Counsel submits that an appeal is a continuation of trial, and, therefore ratification could be done even at appellate stage. I am not inclined to accept this submission either, for reasons stated. Any ratification had to be done before the accused entered his defence and cannot be allowed to be done after the acquittal of the accused. Lastly, Shri Sardessai, submits that lack of authority is a curable irregularity u/s 465 of the Code. This submission also deserves to be rejected. Want of authority of a person is not a mere irregularity but a fundamental defect which makes the Complaint itself not maintainable u/s 142(a) of the N.I. Act. We must not forget that the trial of the accused is essentially a criminal trial and the accused is entitled to take the benefit of any inherent weakness or defect in the case of the prosecution.

10. The view held by the learned Sessions Judge is not only plausible but a correct view of the controversy involved and therefore the judgment calls for no interference from this Court.

11. Criminal Appeal therefore is hereby dismissed.

