

(2021) 12 SHI CK 0044
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No.200 Of 201

M/S R.V. Hardware & Sanitary Stores Having Partnership Firm
At Model Town Manali, P.O

APPELLANT

Vs

Shyam Dass

RESPONDENT

Date of Decision : 06-12-2021

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138
Code Of Criminal Procedure, 1973 — Section 391
Indian Partnership Act, 1932 — Section 69(2)

Citation : (2021) 12 SHI CK 0044

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Maan Singh, Adarsh K. Vashista

Final Decision : Allowed

Judgement

Jyotsna Rewal Dua, J

1. This appeal arises out of the judgment passed by learned Judicial Magistrate 1st Class, Manali, District Kullu, on 27.03.2019, whereby, the respondent/accused was acquitted of the charges for the commission of offence under Section 138 of Negotiable Instruments Act.

2. I have heard learned counsel for the parties and gone through the record of the case.

3. A criminal complaint under Section 138 of the Negotiable Instruments Act was filed by the firm M/s R.V. Hardware & Sanitary Stores through one Sh. Hem Raj. The complaint was in relation to a cheque allegedly issued by the respondent. Learned trial Court has acquitted the respondent vide impugned judgment.

The reasons for acquittal of the respondent as recorded by learned trial Court are that (i) the complainant/appellant had not produced the registration certificate of the firm on record;(ii) there was no document on record to show about Sh.

Rinchen Thomas being the managing partner in the complainant firm and Sh. Rinchen Thomas having further authorized Hem Raj to file the complaint. Relevant part of the impugned judgment reads as under:-

"15 Coming to case in hand, in the present case, the complaint has been filed by SPA and the Power of Attorney has been given by Rinchen Thomas as managing partner of the said firm, as the cheque was in name of firm, therefore, the first thing which was required to prove is that the Rinchen Thomas was partner of the Firm and had authority to appoint SPA for the purpose of dealing with the matter related to the said Firm. In the present case, no registration certificate of the Firm had been produced on record nor there is anything to show that Rinchen Thomas was himself a managing partner in the said Firm. First thing which was required to be proved was that the complainant was holder in due course and was having authority to file the complaint on behalf of the Firm, however, the relationship of firm with the Rinchen Thomas as managing partners has not been established on record and there were two partners in the firm as per CW-1 nor there is anything to show that he was having authority to appoint said SPA for the purpose of filing of the complaint and hence, it can be safely stated that it has not been proved that he was authorized person for the purpose of filing the complaint."

4. During hearing of the case, learned counsel for the appellant invited attention to Cr.MP No.758 of 2019 filed by the applicant/appellant under Section 391 of Code of Criminal Procedure for placing on record certain additional documents. The documents sought to be produced through this application are: (i) partnership deed dated 09.10.2009, whereunder Sh.Rinchen Thomas is stated to be one of the partners of the firm M/s R.V. Hardware & Sanitary Store; (ii) resolution dated 24.04.2016, whereunder, Sh.Rinchen Thomas has been authorized to be the managing partner of the firm; and (iii) authorization letter dated 20.05.2016, whereunder, Sh.Rinchen Thomas has allegedly authorized Hem Raj to issue notice as well as to file complaint under Section 138 of NI Act in respect of the dishonour of cheque No.374674 dated 30.04.2016.

5. Learned counsel for the petitioner has prayed for setting-aside the impugned judgment dated 27.03.2019. In support of this prayer, reliance has been placed upon a judgment passed by a Co-ordinate Bench of this Court in Cr. Appeal No.140 of 2018, titled Ms. Uttam Traders Ranghri Versus Tule Ram alias Tula Ram, decided on 11.09.2018. Following two questions were considered in M/s Uttam Trader's case (supra):-

"(i) Whether the application filed by the appellant to place on record the partnership deed can be allowed especially after the learned trial Magistrate has acquitted the respondent for the offence punishable under Section 138 of the Act, only on account of the managing partner of the appellant having failed to establish that he was one of the partners of the complainant-firm and duly authorised by it to file the complaint.

(ii) Whether a partner of an unregistered partnership firm can maintain a complaint under Section 138 of the Negotiable Instruments Act."

In Uttam Trader's case (supra), the complainant feeling aggrieved against the acquittal of the respondent alongwith the main appeal had also filed an application Cr.MP No.464 of 2018 under Section 391 Cr.P.C. for placing on record the copy of partnership deed by way of additional evidence. After considering the exposition of law laid down on the subject, it was held that the appellant/applicant (therein) ought to be granted one chance to place and prove on record the partnership deed. Accordingly, Cr.MP No. 464 of 2018 moved by the appellant (therein) was allowed.

In respect of the second question regarding effect of non-registration of the firm, after referring to long line of decisions of various Hon'ble Courts, the Co-ordinate Bench of this Court held as under:-

"26. From the discussion so far, it is abundantly clear that an unauthorized partnership firm cannot approach the Court for enforcement of any right arising from a contract, hence civil proceedings for recovery of money would be barred by virtue of sub Section (2) of Section 69 of the Partnership Act. However, proceedings under Section 138 of the NI Act cannot be treated as civil suit for recovery of cheque amount with interest as was held by the Hon'ble Supreme Court in R.Vijayan vs. Baby and another (2012) 1SCC 260."

Finally, the appeal was allowed. The judgment impugned in M/s Uttam Trader's case was set aside and the matter was remanded to the learned trial Court for fresh decision.

6. Learned counsel for the parties in the instant appeal are unison that the controversy in the instant appeal is squarely covered by the judgment passed in M/s Uttam Traders Ranghri's case (supra). Consequently, Consequently, Cr.MP No.758 of 2019 is allowed. Following the ratio of judgment in Uttam Trader's case (supra), the appeal is also allowed. The judgment dated 27.03.2019 passed by the learned JMFC, Manali, District Kullu, in Criminal Case No. 333/2016 tilted Ms. R.V. Hardware & Sanitary Stores vs. Shyam Dass, is set-aside. The matter is remitted back to the learned JMFC, who shall afford an opportunity to the appellant to lead evidence with regard to the factum of partnership as also due authorization, if any, in favour of Sh. Hem Raj. It goes without saying that the respondents shall have corresponding right of cross-examining the appellant's witnesses as well as right to lead his own evidence.

The parties through their counsel(s) are directed to appear before the learned trial Court on 20.12.2021.

The appeal is disposed of in the above terms. Pending application(s), if any also stand disposed of.