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NIKITA JAIN

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HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 295 of 2017

Reserved on 06/08/2026

Pronounced on 17/08/2026

1 - Vandana Global Limited A Company Duly Incorporated And Registered Under Provision Of The Companies Act 1956 Having Its Registered Office At Vandana Bhawan M G Road Raipur Tahsil And District Raipur Chhattisgarh. Through Authorized Representative Shri Ajay Tipte Company Secretary S/o Late Shri Vijay Tipte Aged About 33 Years R/o Maruti Heights Mohoba Bazar Tahsil And District Raipur Chhattisgarh. Complainant , Chhattisgarh

... Appellant

versus

1 - Subhash Chouhan S/o Lalchand Chouhan Aged About 50 Years R/o 46 /40 Mother Teresa Nagar Champ - 1 Police Station Chhawani Bhilai Tahsil And District Durg Chhattisgarh.

... Respondent

For Appellant	:	Shri D. K. Gwalre, Advocate.
For Respondent	:	Shri Bharat Lal Dembra, Advocate appears along with Shri C. R. Sahu and Shri Anil Kamble, Advocate.

Single Bench:Hon'ble Shri Sanjay S. Agrawal, J

CAV Judgment

1. This appeal is directed against the judgment of acquittal dated 16.08.2017 passed by the Fourth Additional Sessions Judge to the Court of First Additional Sessions Judge, Raipur in Criminal Appeal No.119/17, whereby the learned Appellate Court, while reversing the

judgment of conviction and order of sentence dated 03.04.2017 passed in Criminal Complaint Case No.191/11 by the learned Principal Judicial Magistrate, First Class, Raipur C.G., has acquitted the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter refereed to as 'the Act').

2. Briefly stated the facts of the case are that the appellant, a registered company known as Vandana Global Limited, had placed an order for supply of 3600 metric tons of iron ore vide order No.VGL/RM/10/39/00104 on 06.10.2007 to the respondent – M/s Cheery Commercials, which is subsequently changed and known as M/s Minal Traders, who had accepted the said purchase order, on 10.10.2007 and, in lieu thereof, the appellant-company has paid an advance amount of Rs.81,00,000/- (Eighty One Lacs Rupees Only) for the supply of 3600 metric tons of iron ore, but the respondent has supplied only 1880 metric tons of iron ore and, a meeting was, therefore, convened between the representatives of the parties on 28.05.2008 and the dispute was resolved therein and, the respondent had agreed to pay a total sum of Rs.79,92,612/- (Seventy Nine Lacs Ninety Two Thousand Six Hundred Twelve Rupees), phase-wise installment as the outstanding dues payable to the appellant-company. In view of such a settlement and for its partial payment, the respondent in discharge of legal liability issued a cheque bearing No.005532 on 14.06.2008 drawn its State Bank of India, Ram Nagar, Bhilai, District Durg for a sum of Rs.3,00,000/- (Three Lacs Rupees Only), which was dishonoured upon its presentation by the appellant-company in its bank account maintained with the Oriental Bank of Commerce on 24.11.2008

with a remark, “not arranged for”, leading to the issuance of demand notice, dated 01.12.2008 which was refused by the respondent leading to the filing of the complaint by the appellant-company through its authorised power of attorney holder, namely, Rabindra Nath Shahi, the General Manager, of the appellant-company, for the offence punishable under Section 138 of the Act before the competent Court having its territorial jurisdiction.

3. In order to bring home the guilty of the respondent, the appellant-company has examined only one witness and exhibited 12 documents, while none was examined by the respondent in its defense.

4. The trial Court, after considering the evidence led by the appellant-company, convicted the respondent for the offence punishable under Section 138 of the Act and, sentenced six months simple imprisonment and a fine amount of Rs.5,00,000/-, failing which, to undergo for an additional four months simple imprisonment.

5. The aforesaid judgment of conviction and order of sentence has been reversed by the Appellate Court in an appeal preferred by the respondent, holding *inter alia,* that Ajay Tipte, who was examined by the appellant-company, was neither authorised by the resolution of its Board of Directors, nor was aware of the alleged transaction made between the appellant-company and the respondent in the year 2008, as he came to know only when the authority letter was issued in his favour by its Managing Director – Vijit Agrawal. In view thereof, his statement cannot be relied upon and accordingly, the respondent has

been acquitted for the commission of the alleged crime and, being aggrieved, the instant appeal has been preferred.

6. Shri Gwalre, learned counsel appearing for the appellant-company submits that the finding of the Appellate Court disbelieving the statement of said Ajay Tipte examined as an authorised representative of the appellant-company holding that he was incompetent to prove the case of the appellant-company is apparently contrary to the law. While inviting attention to the Authority Letter (Ex.P.-8) given by the Managing Director of the appellant-company, it is contended that Shri Ajay Tipte was authorised to act on behalf of the company, therefore, his statement ought not to have been disbelieved by the Appellate Court. In support, he placed his reliance upon the decision rendered by the Supreme Court in the matter of ***TRL Krosaki Refractories Limited*** vs. ***SMS Asia Private Limited and Another*** reported in **(2022) 7 SCC 612**.

7. On the other hand, Shri Bharat Lal Demra, learned counsel appearing for the respondent, while inviting attention to the Authority Letter (Ex.P.-8) of said Ajay Tipte submits that since he was neither authority by the Board of Directors of the appellant-company, nor was aware of the alleged transaction, therefore, his evidence has rightly been disbelieved by the Appellate Court, while acquitting the respondent for the commission of the alleged crime. In support, he placed his reliance upon the decision rendered by the Supreme Court in the matter of ***A. C. Narayanan*** vs. ***State of Maharashtra and Another*** reported in **(2014) 11 SCC 790.**

8. I have heard learned counsel for the parties and perused the entire record carefully.

9. The questions, which arise for determination in this appeal are as to (1) “Whether the Appellate Court while acquitting the respondent for the commission of the alleged crime under Section 138 of the Act was justified in holding that the authorised representative of the appellant-company, namely, Ajay Tipte was incompetent to prove the case of the company ?

(2) Whether the complaint filed by the appellant/company through its Power of Attorney holder, namely, Shri Rabindra Nath Shahi would be held to be maintainable on account of his dis-continuation to the proceedings ?”

Reference to question (1):-

10. Perusal of the record would show that the cheque bearing No.005532 dated 14.06.2008 issued by the respondent for Rs.3,00,000/- in discharge of the legal liability drawn on the State Bank of India, Ram Nagar, Bhilai, District Durg was dishonoured upon its presentation by the appellant-company in its bank account maintained with the Oriental Bank of commerce with a remark, “not arranged for” vide communication dated 24.11.2008 (Ex.P.-3) and, the demand notice dated 01.12.2008 (Ex.P.-4) issued, thereafter, was refused by the respondent which led to the filing of the complaint by the appellant-company through its power of attorney holder, namely, Rabindra Nath Shahi, on 20.01.2009.

11. On account of the dishonour of the alleged cheque and for initiating the proceedings against the proprietor of M/s Minal Traders for having committed the offence under Section 138 of the Act, a power of attorney (Ex.P.-7) was executed on 20.01.2009 in pursuance of the resolution (Ex.P.-12) passed on 20.01.2009 by the Board of Directors of the appellant-company authorising one Rabindra Nath Shahi to file the complaint. Acting upon such a power of attorney, he filed the complaint against the proprietor of M/s Minal Traders, who in a meeting held on 28.05.2008 had agreed to pay a total sum of Rs.79,92,612/- in phase-wise installments as the outstanding dues payable to the appellant-company.

12. The said power of attorney holder, who was aware regarding the alleged transactions and was authorised exclusively to present the appellant-company in all purposes in connection with the criminal complaint against the proprietor of said M/s Minal Traders pertaining to dishonour of the alleged cheque has, however, failed to appear in the Court for establishing the alleged allegations made in the complaint and, instead someone else, namely, Ajay Tipte was appeared as a witness in order to prove the same. According to the appellant-company, he was authorised to act on behalf of the company as he was authorised to act as such by the Managing Director of the company, namely, Shri Vijit Agrawal by executing an authority letter (Ex.P.-8). It, however, appears from a bare perusal of the alleged authority letter that he was authorised to perform the act on his behalf only and, was nowhere authorised to represent the appellant-company in connection with the alleged dishonour of the cheque, as Rabindra

Nath Shahi was authorised vide power of attorney (Ex.P.-7), dated 20.01.2009.

13. Be that as it may, a bare perusal of his (PW-1) testimony would reveal the fact that though it was stated by him that he was working in the appellant-company as a Company Secretary since December, 2009, but no document to this effect has been placed on record, so as, to hold that he was working as such and, from para 23 of his cross-examination, it appears that he was not at all aware regarding the alleged transaction and came to know only when the authority letter (Ex.P.-8) was given to him on 30.05.2013. It, thus, appears that he was neither working in the appellant-company when the alleged transaction was made with the respondent, nor was even aware of it. No reliance, therefore, could be placed upon his testimony.

14. Pertinently to be noted here further that the complaint was filed on 22.01.2009 through the power of attorney holder, namely, Rabindra Nath Shahi and, according to the order sheet dated 08.05.2009, it appears that the matter was directed to be listed for recording the evidence on 15.07.2009 but, despite the sufficient opportunities being given, he failed to appear for recording his evidence even when a last opportunity was given vide order dated 25.02.2014. It, thus, appears that even after passing of more than a considerable period of 5 years, he failed to appear and, instead one Ajay Tipte (PW-1) was examined by the appellant-company for proving its case, who, as observed herein-above, was neither the employee of the appellant-company at the relevant point of time when the alleged transaction was made, nor was he even aware regarding the same, nor any evidence was placed

on record showing that he was appointed by the Board of Directors of the appellant-company, as Shri Rabindra Nath Shahi was authorized under the Power of Attorney (Ex.P-7) to represent the case pertaining to the alleged criminal case. The question (1) is, thus, answered in positive.

Reference to question (2):-

15. Perusal of the record would show that on 13.12.2013, an application was made by the counsel appearing for the appellant-company before the trial Court seeking production of the Authority Letter (Ex.P.-8) of one Ajay Tipte, but no order on the said application was passed and, the matter was directed to be listed for evidence on 25.02.2014. It appears further that none was present on the said day even though the last opportunity was given vide order dated 25.02.2014. It appears further from perusal of the order-sheets that the authorised power of attorney holder, namely, Rabindra Nath Shahi was appeared only on three occasions, i.e., on 22.01.2009, when the complaint was filed by him on behalf of the appellant-company, and then on 03.02.2009 and 29.04.2009 as his signature was found to be shown in the right column of those order-sheets and, the signature of said Ajay Tipte was shown in the order-sheet dated 25.02.2014, who on the said day appeared and noted for the further date of hearing, i.e., 07.04.2014 though his Authority Letter (Ex.P.-8) was sought to be produced by way of the application made on 13.12.2013 and, even in absence of permitting the production of the said Authority Letter, he (Ajay Tipte) was not only appeared, but has given his evidence without any authority. His

evidence is, thus, of no value so as to place reliance on his testimony for proving the contents made in the complaint.

16. What is, therefore, reflected from the aforesaid proceedings that the power of attorney holder, namely, Rabindra Nath Shahi, who was authorized by the Board of Directors of the appellant-company to initiate the proceedings against the respondent for the offence punishable under Section 138 of the Act has, however, failed to appear and, the application, as revealed from the order sheet, dated 13.12.2013 filed by the counsel appearing for the appellant-company seeking production of the "Authority Letter" of one Ajay Tipte was, neither found to be allowed, nor was he allowed to pursue the matter on behalf of the appellant-company and, in absence of any of the authorized representative of the appellant-company, the same would, thus, be held to be terminated on account of his (Shri Rabindra Nath Shahi) non-appearance by operation of law. The complaint filed by the appellant-company through its Power of Attorney holder, namely, Rabindra Nath Shahi, thus, rightly held to be not maintainable on account of dis-continuance of the proceedings by him. The question No.2 is, thus, answered in negative.

17. Now, insofar as the principles laid down by the Supreme Court in the matter of **A. C. Narayanan vs. State of Maharashtra and another** (supra), as relied upon by the counsel appearing for the respondent, is concerned, the same is, however, noted to be distinguishable. As in the said matter, the "complainant", who filed the complaint through the power of attorney holder was an individual person and, the power of attorney holder, who filed the complaint based upon the said authority

given to him, was also an individual person, therefore, in view of the said factual background, it was held that the power of attorney holder can depose and verify on oath in order to prove the contents made in the complaint only when he has knowledge of transaction as an agent of the individual-complainant. However, in the instant matter, the appellant was a company, therefore, the principles laid down therein is distinguishable from the facts involved herein and, the said observation is fortified by the principles laid down by the Supreme Court in the matter of **TRL Krosaki Refractories Limited vs. SMS Asia Private Limited and Another** (supra), wherein, it was held to be seen from a different angle when the “complainant” is a “company”. The relevant observation made to this effect at paragraph 22 reads as under:-

> **22.** **“**Despite our conclusion that the documents available on record would on facts satisfy the requirement relating to delegation of power and also knowledge of the transaction by the person representing the Company in the instant case, it is also necessary for us to keep in perspective that though the case in A.C. Narayanan (supra) has taken the centre stage of consideration, the facts involved therein were in the background of the complainant being an individual and the complaint filed was based on the power of attorney issued by the “payee” who was also an individual. In such an event, the manner in which the power was being exercised was to be explicitly stated so as to establish the right of the person prosecuting the complaint, to represent the payee i.e., the complainant. The position that would emerge when the complainant is a company or a corporate entity will have to be viewed from a different standpoint.”

18. As observed herein-above, since said Ajay Tipte, who entered into the witness box in order to prove the contents made in the complaint, was neither found to be authorized by the Board of Directors of the

appellant-company, nor was even found to be the employee of the appellant-company at the relevant point of time, nor was he aware of the alleged transaction, therefore, the principles laid down in above referred matter of **TRL Krosaki Refractories Limited vs. SMS Asia Private Limited and Another** (supra) would also be of no use.

19. Consequently, the appeal, being devoid of merits is dismissed.

Sd/-

(Sanjay S. Agrawal)
JUDGE

Nikita