

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No.2053 OF 2003

(From the judgement and order dated 08/01/2003 in CRL No.318/2002
of the HIGH COURT OF DELHI AT N. DELHI)

M/S. APEX MINERALS PVT. LTD.

Petitioner(s)

VERSUS

M/S. HARGOBIND PESTICIDES STORE & ANR.

Respondent(s)

(With office report)

Date: 14/02/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Petitioner(s)

Mr. Anupam Lal Das,Adv.

For Respondent(s)

Mr. Naresh Kumar,Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard the learned counsel for the parties.

Leave granted.

The criminal appeal is allowed.

[T.I. Rajput]
Court Master

[V.P. Tyagi]
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.292 OF 2005

(Arising out of S.L.P. (Crl.) No.2053 of 2003

M/s. Apex Minerals Pvt. Ltd.

...Appellant(s)

Versus

M/s. Hargobind Pesticides Store & Anr.

...Respondent(s)

O R D E R

Heard the learned counsel for the parties.

Leave granted.

The appellant is a complainant in a complaint filed against the respondent under Section 138 of the Negotiable Instruments Act, 1881. The trial court, by order dated 7th September, 2001, came to the conclusion that, prima facie, case under the aforesaid provision has been made out against the accused and directed summoning

of the accused on 2nd March, 2002. On 2nd March, 2002, neither the complainant nor his counsel appeared resulting in dismissal of the complaint for default. The criminal revision petition challenging the order of the trial court dated 2nd March, 2002 having been dismissed by the High Court by the impugned judgement and order under appeal, the complainant has filed the present appeal.

The High Court, though noticing that liberal approach is required to be adopted in these matters, rejected the criminal revision petition on perusal of the orders passed prior to 7th September, 2001 when the complaint

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was adjourned from time to time either on account of the absence of the witnesses for pre-summoning evidence stage or other reasons attributed to the complainant.

In the facts and circumstances of the case, that was not of much relevance since the trial court directed summoning of the accused in terms of order dated 7th September, 2001 on 2nd March, 2002 which was the first date for the appearance of the accused. Having regard to the facts and circumstances of the case, we are of the view that the impugned judgement and order of the High Court affirming the order of the trial court dated 2nd March, 2002 deserve to be reversed and we, accordingly, order.

The criminal appeal is, thus, allowed.

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.....J.

[Y.K. SABHARWAL]

.....J.

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[P.P. NAOLEKAR]

New Delhi,

February 14, 2005.