

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1528/2019
(Arising out of Special Leave Petition (CrI)No.1069/2019)

BAJRANG TRIPATHI

Appellant(s)

VERSUS

M/S VIDHYAWATI CONSTRUCTION COMPANY & ANR.

Respondent(s)

O R D E R

Leave granted.

The appellant was convicted under Section 138 of the Negotiable Instruments Act (in short 'NI Act') and sentenced to imprisonment of one year and fine of Rs.50,00,000/-.

The appeal filed by the appellant was allowed and he was acquitted. The Appellate Court held that the respondent-complainant has failed to prove that the cheque in dispute was issued for an enforceable debt. The Appellate Court further held that the appellant was successful in refuting the presumption under Section 138 of the NI Act. That apart, the Appellate Court was of the opinion that the complainant was unable to prove that the appellant had knowledge of the notice which was

sent by the complainant and that the appellant deliberately avoided the service of notice.

The High Court allowed the Criminal revision filed by the respondent and remanded the matter back to the appellate court for fresh consideration. The only point that was adjudicated by the High Court pertains to the service of notice on the appellant and the consequences of the appellant avoiding notice which is the complaint of the respondent. The High Court failed to deal with the other findings of the First Appellate Court that the offence was not made out by the complainant before remanding the matter.

In view of such findings of the Appellate Court not having been dealt with by the High Court, we are of the opinion that the matter needs to be remitted back to the High Court to consider the findings recorded by the Appellate Court on merits. Therefore, we set aside the judgment of the High Court and remand the matter to the High Court for fresh consideration. We have not expressed any opinion on the merits of the case.

We are informed by the learned counsel for the respondent that the trial commenced in the year 2008. Taking note of the pendency of the case for a long time, we request the High Court to decide the Criminal Revision expeditiously.

The appeal is accordingly allowed. Pending application, if any stand disposed of.

.....J
(L.NAGESWARA RAO)

.....J
(HEMANT GUPTA)

NEW DELHI;
4th October, 2019

ITEM NO.35

COURT NO.9

SECTION II

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

Petition for Special Leave to Appeal (Cr1)No.1069/2019

BAJRANG TRIPATHI

Appellant(s)

VERSUS

M/S VIDHYAWATI CONSTRUCTION COMPANY & ANR.

Respondent(s)

(With application for exemption from filing O.T.)

Date : 04-10-2019 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO

HON'BLE MR. JUSTICE HEMANT GUPTA

For Appellant(s) Mr. R.Venkatramani, Sr. Adv.
 Mr. Navin Prakash, AOR
 Mr. Ravindra Nath Tripathi, Adv.
 Mr. Ved Vyas Tripathi, Adv.
 Mr. Praveen Vignesh, Adv.

For Respondent(s) Mr. Pawanshree Agrawal, AOR
 Ms. Abhipsa Anamika, Adv.

Mr. Ardhendumauli Kumar Prasad, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the
signed order. Pending application, if any stand
disposed of.

(B.Parvathi)
Court Master

(Sunil Kumar Rajvanshi)
Court Master

(Signed order is placed on the file)