

Samrat Shipping Co. Pvt. Ltd. vs Dolly George on 10 December, 1999

Equivalent citations: JT1999(10)SC381, (2002)9SCC455, AIRONLINE 1999 SC 423, (1999) 10 JT 381 (SC), (2000) 2 ALLCRILR 41, (2000) 2 ICC 431, (2000) 38 ALL LR 746, (2000) SC CR R 718, (2001) 1 RECCRIR 596, 2002 (9) SCC 455, (2003) 25 OCR 480, 2003 SCC (CRI) 1224

Author: K.T. Thomas

Bench: K.T. Thomas, M.B. Shah

ORDER

K.T. Thomas, J.

1. Leave granted.

2. The appellant-company has filed a complaint before a Magistrate Court for offence under Section 138 of the Negotiable Instruments Act. The Magistrate dismissed the complaint on the ground that there was no resolution of the Board of Directors of the petitioner-Company authorising the person who represented the Company before the Magistrate Court. Though appellant preferred a revision before the Sessions Court that became futile and he moved the High Court invoking Section 482 of the CrPC. Learned Single Judge dismissed the petition of the appellant in spite of the fact that appellant produced a copy of the resolution for showing that the Company had authorised the particular individual to present the complaint before the Court. The High Court while dismissing the petition observed thus:

Having heard the parties' counsel and after going through the record it appears that the resolution which has been filed on record of this Court is not certified by any person at page 13. If it is uncertified copy, how far it could be taken to be a correct and true copy. But nobody is inclined to take responsibility about its correctness. It is a matter of grave doubt that such a resolution should allure to the benefit of the petitioner for, it is not a Civil Suit. It is a criminal prosecution. Authorisation to prosecute, being of the nature of sanction, the Board of Directors is supposed to apply their mind to the facts and circumstances of each case before authorising any person to prosecute any person for any offence in the submission of the LD. Counsel. It appears plausible at least for the present purpose for no application has ever were

filed before any Court seeking permission to take additional evidence accepting what is filed in this Court for the first time.

3. Having heard both sides we find it difficult to support the orders challenged before us. A Company can file a complaint only through human agency. The person who presented the complaint on behalf of the Company claimed that he is the authorised representative of the company. Prima facie, the trial court should have accepted it at the time when a complaint was presented. If it is a matter of evidence when the accused disputed the authority of the said individual to present the complaint, opportunity should have been given to the complainant to prove the same, but that opportunity need be given only when the trial commences. The dismissal of the complaint at the threshold on the premise that the individual has not produced certified copy of the resolution appears to be too hasty an action. We, therefore, set aside the impugned orders and direct the trial court to proceed with the trial and dispose it off in accordance with law. Parties are directed to appear before the trial court on 31.01.2000.