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901criapl3710.23

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

901 CRIMINAL APPLICATION NO. 3710 OF 2023

PRATHIBHA CHAMPALAL JAIN AND ANOTHER

....Applicants

VERSUS

BHUSHAN GIRIDHAR PATIL

.....Respondent

Mr. C. C. Deshpande, Advocate for the applicants

Mr. P. C. Mayure, Advocate for respondent

CORAM : SANJAY A. DESHMUKH, J.

DATE : 08th MAY, 2024

P. C.

1. This application is filed for quashing of the complaint bearing SCC No.1084/2021 thereby order of issue process against the applicants was passed by the court of JMFC, Dhule under Section 138 of the Negotiable Instruments, Act (for short 'the N. I. Act').

2. It is averred in the complaint that the applicant and co-accused are running a partnership firm. They have admitted their liability to pay an amount of Rs.80 lakhs paid to them in

respect of land sale transaction. The cheque of Rs.35 lakhs was issued by Kalpesh Jain who is accused No.1 in favour of respondent. The cheque was dishonored by cheque return memo dated 07-04-2021 because of insufficient funds in his account. Accordingly it was informed to the respondent by that banker . The notice was issued to the applicants and other accused i.e. 1 to 4. However, neither did they reply to that notice nor did they pay that amount. Therefore, the complaint case was filed.

3. Learned JMFC, Dhule after hearing the learned advocate for the applicants and after perusing the documents, held that there is prima facie case against the applicants under Section 138 of the N. I. Act and the order of issue process was passed.

4. Grounds for quashing said complaint are that cheque was issued by accused No.1-Kalpesh Jain without knowledge of the applicants. The applicants have not signed the said cheque and therefore, they cannot be prosecuted for criminal liability

punishable under Section 138 of the N.I. Act.

5. Learned advocate for the applicants submits that the applicants are falsely implicated in the crime. The cheque was signed by accused No.1 Kalpesh alone. Cheque was not signed by the other accused i.e. applicants. That cheque was not issued with their knowledge. He therefore, prayed to quash the proceeding. He relied upon the judgment in the case of Arpana A. Shah Vs Sheth Developers Pvt. Ltd. And others reported in MANU/SC/0598/2013 in which the law is laid down that strict interpretation is required to be given to penal statutes like Section 138 of the N. I. Act. In case of issuance of cheque of joint account, all holders cannot be prosecuted unless the cheque is signed by each and every person who are joint account holders. Issuance of process clearly shows that only drawer of cheque is responsible for the same. The culpability attached to dishonour of cheque can be in no case 'except in case of section 141 of the N. I. Act' be extended to those on whose behalf cheque is issued. It is only drawer of cheque who can be made

accused.

6. Learned advocate for the applicants submits that there is a partnership between applicants and accused No.1 has specifically asserted it and it is not denied that those cheques are issued by accused No.1. Thus all are liable and they shall be deemed to be liable to pay as per section 141 of the N. I. Act. Learned advocate for the applicants placed reliance on the authority of Riya Bawrif Etc Vs Mark Alexander Davidson and Ors reported in AIR Online 2023 SC 651, in which law is laid down that a partner was retired from the firm on the date when the cheques were issued. It would be a matter of evidence before the trial court as to whether any Retirement Deed and public notice concerning the same was issued before the complaint was filed. The order of High Court quashing summoning order and complaints was set aside.

7. Learned advocate for the respondent strongly objected this application. By submitting the affidavit-in-reply it

is submitted that, admittedly there was compromise in between these applicants and the complainant which is signed by them before the notary on 20-11-2023, in which it is mentioned that there is a partnership between the applicants and accused No.1. Therefore, under Section 141 of the N. I. Act there is criminal liability of all these applicants with accused No.1, who are admittedly partners. Therefore it is prayed to reject the application.

8. Perused the complaint. The complaint does not disclose that said offence was committed with the knowledge of applicant partners which is a requirement of section 141 of N. I. Act. Admittedly cheque is signed by applicant No.1. Thus, as per case in hand knowledge of the applicants is neither pleaded nor established that cheque was issued with their knowledge and therefore, they are criminally liable.

9. There are some kind of civil and criminal mischiefs and liabilities (i) Purely civil (ii) Purely criminal (iii) Both civil

and criminal (iv) Misconduct of public servant etc. for departmental actions (v) Corporate liability under Section 141 of N. I. Act (vi) Joint and several liabilities etc. The concept of civil and criminal liabilities has been clarified by the Hon'ble Supreme Court in case of **Kapurchand Pokhraj Vs. State of Bombay, AIR 1958 SC 993** as under:

“The words “Liability incurred” are very general and comprehensive and ordinarily take in both civil and criminal liability. In criminal law the term “liability” covers every form of punishment to which a man subjects himself by violating the law of the land. There is no reason why the all comprehensive word should not carry its full import but be restricted to civil liability alone? The context does not compel any such limitation.”

10. The applicants and others have agreed to their civil liabilities by executing their compromise deed and for that civil action like suit for recovery of amount is necessary. But criminal liability cannot be fastened. When cheque is issued by accused No.1 who has asserted his criminal liability. It is not shown from the pleading or by any document from record that the applicants

were having knowledge of the issuing of the disputed cheque. The applicants have not signed that cheque. Thus, in view of the ratio laid down in the authority of ***Aparna*** (supra) submitted on behalf of the applicants, they cannot be held criminally liable for issuing the disputed cheque. The cheque is not issued on behalf of partnership firm. On the contrary, it is issued and signed by accused No.1 only. Therefore, applicants cannot be held liable and shall not be deemed criminally liable as contemplated under Section 141 of the N. I. Act. Thus, the pleading of the complainant lacks about the knowledge of issuance of cheque to hold them criminally liable. Therefore, the authority of ***Riya Bawri*** (supra) submitted on behalf of respondent is not helpful to them to reject this application.

11. In view of above reasons, if applicants are compelled to face said criminal trial, it would be certainly an abuse of process of court. The application therefore, deserves to be allowed in terms of prayer clause-B. The application is disposed of accordingly.

12. Considering the fact that huge amount of Rs. 35 lacs is involved and that case was filed in the year 2021, the trial court is directed to hear and decide the SCC No. 1084/2021 expeditiously, as early as possible and in any case on or before 31.08.2024 and report accordingly.

13. Concerned to inform trial court accordingly.

[SANJAY A. DESHMUKH, J.]

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