IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.432 OF 2012

Gaurang Vinod Doshi …Applicant
versus
1.The State of Maharashtra
2.Film Logic India Private Ltd. ...Respondents

WITH
CRIMINAL APPLICATION NO.471 OF 2013
in
CRIMINAL REVISION APPLICATION NO.432 OF 2012

Film Logic India Private Ltd. ….Applicant
in the matter between

Gaurang Vinod Doshi …Applicant
versus
1.The State of Maharashtra
2.Film Logic India Private Ltd. ...Respondents

WITH

CRIMINAL APPLICATION NO.373 OF 2012
in
CRIMINAL REVISION APPLICATION NO.432 OF 2012

Gaurang Vinod Doshi …Applicant
versus
1.The State of Maharashtra
2.Film Logic India Private Ltd. ...Respondents

Mr.P.D.Desai i/b. Mr.Rishi Bhuta, for Applicant in Revn 432/12. & Appln.373/12.

Mr.Rajesh More, Addl.PP for State.

Mr.V.K.Singh, for Respondent no.2 in Revn.432/12 & for Applicant in Appln.no.471/13.

CORAM : K.U.CHANDIWAL, J.

Reserved on : 23rd DECEMBER, 2013

Pronounced on : 24th DECEMBER,2013.

P.C. :

Rule returnable forthwith. Heard finally.

2. The applicant was convicted for offence under Section 138 of Negotiable Instruments Act by learned Metropolitan Magistrate and sentenced to suffer S.I. for four months with payment of compensation amount of Rs.32,00,000/- to the complainant, in default S.I. for three months. Feeling aggrieved, he preferred appeal no.378 of 2010 which was dismissed on 26.9.2012 by the learned Additional Sessions Judge, Bombay.

FACTS IN COMPLAINT

3. The applicant – Gaurang approached and represented the respondent-complainant, to be a reputed film producer carrying on business in the name and style as V.R.Pictures and for a film the applicant availed camera, lights, from time to time from respondent/complainant under challan and invoice which was supplied. The total amount of dues was Rs.58,27,031/- plus interest. Certain payments were made by the applicant-Gaurang by cheques during shooting schedule and they were honoured on presentation. In discharge of liability for balance amount of Rs.30,00,000/-, the applicant issued three cheques of Rs.10,00,000/- each favouring respondent-complainant. On presentation, for the

first time same were returned dishonoured one by one. The applicant assured releasing the payment, sought time. It was on the applicant's instructions the cheques were represented on 23.11.2004. However, same were dishonoured vide banker's memo dated 27.11.2004. A statutory notice under Section 138 read with Section 141 of Negotiable Instruments Act was issued. The applicant through Amrit Shah replied the same on 20.12.2004 informing that the applicant had spoken to one Ajay and both of them will meet and sort out the matter. A complaint petition under Section 138 of Negotiable Instruments Act was filed against the applicant showing him as proprietor of V.R.Pictures.

4. The applicant refuted the allegations and questioned to be proprietor of V.R.Pictures. He asserted that he was power of attorney of his father Vinod Doshi and he was authorised by the proprietor to sign impugned cheques which he has signed. The applicant examined defence witnesses to establish that he was not the proprietor of the firm. Complainant in cross examination accepted that Vinodrai, father of applicant was proprietor of V.R.Pictures.

SUBMISSIONS.

5. Learned Counsel Mr.Desai for the applicant / accused says, the complaint petition erroneously shows the applicant to be a proprietor. The vital documents are suppressed. Admittedly Mr.Vinod Doshi was proprietor, still the applicant was prosecuted. He says, inspite of the fact that the learned Judge has accepted that the applicant was not a proprietor, still he was convicted. There was no process under Section 141 of Negotiable Instruments Act and hence, there

could not be vicarious liability to be fastened against the applicant. He is relied to the judgment of Hon'ble Supreme Court reported in “2007 ALL MR (Cri) 1738 (S.C.), Raghu Lakshminarayanan Vs. Fine Tubes”.

OBSERVATIONS

6. I have perused the three cheques of Rs.10,00,000/- each issued to the respondent-complainant by the applicant under his signature. At the place of drawer's signature the cheques were titled as “V.R.PICTURES Prod.No.8, Gaurang Doshi, Proprietor/Authorised Signatory.” It was obligatory for the applicant to have disclosed his identity in clear terms as to whether he was a proprietor or a authorised signatory. The applicant apparently was a drawer of the cheques and as a drawer, he could not thwart and escape his liability. That apart, the evidence illustrates substantial payments were released by the applicant which are accounted by the complainant and for Rs.30 lacs cheques were issued. The applicant transacted and interacted with the complainant. There will not be any legal hitch and hinderance to prosecute the authorised signatory as he was a drawer of the cheques.

7. In the matter of “Raghu Lakshminarayanan Vs. Fine Tubes” the description was deceptive as accused no.1 therein was indicated as a business concern and other accused were referred as Incharge, Manager, Director and partners. In the situation Hon'ble Supreme Court held, description of accused no.1 being unclear, it cannot be a juristic person either as a company or a firm for want of specific averments. It was in this scenario the observations in paragraph 7

that " A proprietary concern, however, stands absolutely on a different footing. A person may carry on business in the name of a business concern, but he being proprietor thereof, would be solely responsible for conduct of its affairs. A proprietary concern is not a Company.", were made

8. Learned Counsel says, there was no process issued on Section 141 of Negotiable Instruments Act and consequently conviction also calls for interference on this ground.

9. The record illustrates, it was the applicant who represented V.R.Pictures as authorised signatory and power of attorney. Since, he was a drawer of the cheques, he had liability to discharge legal debt of V.R.Pictures. In terms of Section 138 of Negotiable Instruments Act, the drawer of the cheque is also held to commit an offence. It will not be eclipsing process if it was issued only under Section 138 of Negotiable Instruments Act. In fact, in section 138 of Negotiable Instruments Act the situation under Section 141 of Negotiable Instruments Act will also be available and separate process need not be issued. Section 141 of Negotiable Instruments Act deals with the offences by companies and at the time of offence an individual was incharge of and was responsible to the association for the conduct of the business of the association, as well as the association, shall be deemed to be guilty of the offence. Here the applicant was power of attorney and authorised signatory. He deliberately did not strike out the column 'proprietor' on the cheques. Consequently, he cannot escape his responsibilities. Hence, liability to honour the cheque and also to face the

consequence due to its dishonour. The cheques were issued for legal debts of V.R.Pictures on account of said firm of his father.

10. Taking survey of the above facts, in the revisional jurisdiction, the concurrent finding does not call for interference. There is no perversity or non application of mind by both the Courts. Revision Dismissed.

11. Amount of Rs.25,40,000/- deposited before this Court on 30.8.2013 and also the amount deposited before the learned Additional Sessions Judge at Bombay in Appeal no.378 of 2010 be paid over to respondent-original complainant, after 30 days to be adjusted towards compensation of Rs.32,00,000/- as was directed in C.C.No.179/SS/2005.

12. Application no.373 of 2012 is disposed of.

13. Application no.471 of 2013 of the original complainant for withdrawal of amount, is allowed to that extent. The applicant to surrender to undergo sentence.

14. Rule discharged.

15. Order is stayed till 31st January,2014.

(K.U.CHANDIWAL, J.)