

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO.15 OF 2014

Rose Publicity
Through its Proprietor
Shri.Lawrence Cruz D'Souza, Major
H. No.78, B/2, Dando,
Goa Velha, Tiswadi-Goa.

... **Petitioner**

Versus

- 1] 'A' Group Associates
Through its Partners,
Advertising Firms,
Having its registered office at
566, Sachapir Street, Camp,
Pune, India – 411 001.
Having Web Site :
www.agroupassociates.com
E-mail ID -
agroup_associates@rediffmail.com
- 2] Shubhangi Pandurang Haldane
Major of age, residing at
Sterling Centre, 302 Camp,
Pune.
- 3] Vinayak Vithal Katkar
Major of age, Residing at 566,
Sachapir Street, Camp, Pune,
India – 411 001.
- 4] Devendra Devdutta Bhatia
Major of age, Residing at 21
Napier Road, Sholapur Bazar.
- 5] Mr. Pradip Prabhakar Gharatkar,
Major, 1785, Sadashiv Peth,
Pune – 411.
- 6] Wisdom Communication
Through its Proprietor
Shubhangi Haldane, Major,
Having address at B95/20,
Supper Indira Nagar,
Nr. VIT College, Bibwewadi,
Pune - 411 037.

... **Respondents**

Mr. Ryan Menezes, Advocate for the petitioner.

Mr. Sarvadnya D. Patil, Advocate for the respondent Nos.1, 3, 4 and 5.

Coram : C. V. BHADANG, J.

Date : 30th June, 2015.

JUDGMENT :

Heard. Admit. Mr. S. D. Patil, the learned counsel waives service for the respondent Nos.1, 3, 4 and 5.

Heard finally with the consent of the learned counsel for the parties.

2] By this revision application the petitioner – original complainant is taking exception to the judgment dated 29th October, 2013, passed by the learned Sessions Judge, Mapusa in Criminal Revision Application No.49/2013. By the impugned judgment, the learned Sessions Judge has allowed the criminal revision application filed by the respondent Nos.1, 3, 4 and 5 thereby setting aside the order dated 19th March, 2012, by which the learned Judicial Magistrate, First Class at Panaji, had issued process under Section 138 of the Negotiable Instruments Act (hereinafter referred as to 'the N. I. Act') against the respondent Nos.1, 3, 4 and 5.

3] The brief facts are that the petitioner is in the advertising

business. The petitioner had entered into a campaign agreement of an advertisement upon the hoardings situated in the State of Goa on rental basis with the respondent No.1 'A' Group Associates, which is a partnership firm. The respondent Nos.2 to 5 herein are the partners of the respondent No.1. It was contended that the respondent Nos.1 to 5 had availed the services of the complainant in respect of handling the advertisement contract, in respect of which some invoices were raised. It appears that the respondent No.2 Shubhangi Haldane, who happens to be a proprietor of the respondent No.6 Wisdom Communication had passed a cheque dated 12th September, 2011, for Rs.5,95,747/- in favour of the petitioner. That cheque was issued by the respondent No.2 Shubhangi Haldane as a proprietor of the respondent No.6 and it is drawn on account No.1056 of the respondent No.6 with Janaseva Sahakari Bank Ltd., Pune. As the said cheque was dishonoured for want of sufficient funds, the petitioner after issuing the statutory notice lodged a complaint under Section 138 of the N. I. Act before the learned Magistrate at Panaji. The learned Magistrate by an order dated 19th March, 2012 issued process against the respondents herein (the original accused in the complaint case) for the offence under Section 138 of the N. I. Act. Being aggrieved, the respondent Nos. 1, 3, 4 and 5 challenged the same before the Additional Sessions Judge, Mapusa in Criminal Revision

Application No.49/2013. It was contended that on the basis of the documents produced along with complaint, the ingredients of the offence under Section 138 of the N. I. Act were not made out against the respondent Nos.1, 3, 4 and 5. Reliance in this regard was placed on the decision of the Hon'ble Supreme Court in the case of ***P.J. Agro Tech Limited & Ors. Vs. Water Base Limited*** reported in ***AIR 2010 Supreme Court 2596***.

On the other hand, it was contended on behalf of the petitioner before the Sessions Judge that, the respondent No.2 Shubhangi Haldane had issued a cheque, towards the liability of the respondent No.1 partnership firm, towards the petitioner.

4] The learned Sessions Judge framed a solitary point as to whether a complaint under Section 138 of the N. I. Act would be maintainable against the person who was not the drawer of the cheque. The learned Sessions Judge found that the ratio as laid down by the Hon'ble Supreme Court in the case of ***P. J. Agro Tech Limited*** (supra) would govern the controversy in question. It was thus found that the order of issuance of process against the respondent Nos.1, 3, 4 and 5 would not be sustainable and it was accordingly set aside. Being aggrieved, the original complainant is before this Court.

5] I have heard Mr. Ryan Menezes, the learned counsel for the petitioner and Mr. S. D. Patil, the learned counsel for the respondent Nos.1, 3, 4 and 5. There is no appearance on behalf of the respondent Nos.2 and 6.

6] It is submitted by Mr. R. Menezes, the learned counsel for the petitioner that, the respondent No.2 Shubhangi Haldane also happens to be a partner of the respondent No.1. Thus, the subject cheque was issued for a discharge of the liability of the respondent No.1. It is submitted that merely because the respondent No.2 has signed the cheque as the proprietor of the respondent No.6 would be inconsequential. It is submitted that at any rate the matter would have to be decided on merits, after opportunity is granted to the petitioner to lead evidence and the learned Magistrate was right in issuing the process.

7] It is also submitted that the revision filed by the respondent Nos.1, 3, 4 and 5 before the learned Sessions Judge was not maintainable, as the order of issuance of process, would be an interlocutory order. It is submitted that this Court in the order dated 16th July, 2004 had prima facie observed that the revision against the interlocutory order of issuance of process would not be maintainable.

It is submitted that thus the learned Sessions Judge was in error in interfering with the order of issuance of process.

8] On the contrary, it is submitted by Mr. S. Patil, the learned counsel for the respondent Nos.1, 3, 4 and 5 that the order of issuance of process would not be interlocutory. Reliance is placed on the decision of this Court in *M/s. Appollo Tyres Ltd. vs. Dr. Shashitai Bhagwan Ahire reported in 2008 ALL MR (Cri) 1794* in order to submit that, there is no embargo put on the exercise of the revisional jurisdiction of the Court of Sessions, in entertaining the criminal revision application.

9] Insofar as the merits are concerned, it is contended that even according to the petitioner, the monitory liability arose against the respondent No.1 and not against the respondent No.6, which is a proprietorship concern. It is submitted that the cheque is issued by the respondent No.2 in the capacity of the proprietor of the respondent No.6. Thus, even assuming that the respondent No.2 is a partner of respondent No.1, the same would not be of any significance. It is submitted that the offence under Section 138 of the N. I. Act can be attributed only against a person, who was the drawer of the cheque, when the cheque was shown to be drawn on the

account maintained by him, which ultimately came to be dishonoured on presentation. It is submitted that the learned Sessions Judge, on consideration of rival circumstances, has rightly found that no case for issuance of process against the respondent Nos.1, 3, 4 and 5 was made out and no interference is called for.

10] On hearing the learned counsel for the parties and on perusal of the impugned judgment, I find that no case for interference with the order passed by the learned Sessions Judge is made out. At the outset, it needs to be mentioned that an order of issuance of process cannot be termed as interlocutory as it affects the substantive rights of the parties in relation to the controversy involved. The term interlocutory order is not derived in the Code of Criminal Procedure. It is now well settled that the interlocutory order is not converse of a final order. Thus, an order may not be final and still may not be interlocutory. There may be some orders of intermediate nature which would affect the rights of the parties, such orders cannot partake of the nature of an interlocutory orders. This Court in the case of *Appollo Tyres Ltd.* (supra) after considering the decision of the Hon'ble Supreme Court in the case of *Subramaniam Sethu Raman 2005(1) Mah.L.J. 626* has held thus in Para.12 of the judgment :

*Before I proceed to consider the rival submissions, it may be made clear that though certain observations in case of “**Subramaniam Sethu Raman Vs. State of Maharashtra and another**” 2005(1) Mah. L.J.626 : [2004 ALL MR (Cri) 3469 (S.C.)], go to show that the order of issuing process has to be challenged by filing an application under Section 482 of the Cr.P.C., yet there is no specific embargo put on exercise of revisional jurisdiction by the Court of Sessions. A Single Bench of this Court in “**Saket Gore & Ors. Vs. Aba Dhavalu Bagul & Anr.**” 2005 ALL MR (Cri) 2514, held that a revision application against order issuing process is maintainable. Nay, the learned Single Judge further observed in view of such efficacious remedy, process cannot be quashed in exercise of power under Section 482 of the Cr. P. C. The learned Single Judge duly considered the case of “**Subramaniam Sethu Raman Vs. State of Maharashtra**” [2004 ALL MR (Cri) 3469 (S.C.)] (supra). The learned Single Judge took survey of catena of other decisions, including that of “**Adalat Prasad Vs. Rooplal Jindal**” 2004 Mh.L.J.274 : [2004 ALL MR (Cri) 3131 (S.C.)]. The learned Single Judge held that the Supreme Court has not decided an issue whether a revision against order of issuing process is maintainable or not since such issue was not raised in case of Adalat Prasad. Once a co-*

ordinate Bench of this Court has taken a view that revision application against order of issuing process is maintainable, with respects, I find it difficult to deviate therefrom. Hence, the argument advanced on behalf of the applicant about maintainability of the revision application will have to be rejected.

Thus, this issue may not detain me long. The observation of this Court in the order dated 16th July, 2004 were at the stage of issuance of notice in the criminal revision application. Thus, the submission that the learned Sessions Judge should not have entertained the criminal revision application, on account of the order of issuance of process being interlocutory in nature, cannot be accepted and as such, stands refuted.

11] Turning to the merits, it is an admitted position that the cheque is signed by the respondent No.2. A perusal of the subject cheque would show that the respondent No.2 has signed the same as proprietor of the respondent No.6. Admittedly, the petitioner had business dealings with the respondent No.1, which is a partnership firm of which, the respondent Nos.2 to 5 are said to be the partners. It is nobody's case that the petitioner had business dealings with the respondent No.6. The fact remains that the respondent No.2 has not signed the cheque in the capacity of a partner of the respondent No.1.

12] The learned Sessions Judge has considered the ratio laid down by the Hon'ble Supreme Court in the case of ***P.J.Agro Tech Limited*** (*supra*) and has come to the conclusion and rightly so that a complaint for the offence under Section 138 of the N. I. Act would not lie against a person, who was not the drawer to the cheque. It needs to be stated that none of the respondent Nos.3, 4 and 5 had issued the cheque, much less on behalf of respondent No.1. In that view of the matter, no process could have been issued against the respondent Nos.1, 3, 4 and 5. I do not find that the impugned judgment of the learned Sessions Judge shows any perversity or exercise of jurisdiction with material irregularity, calling for interference by this Court.

13] In the result, the revision application is dismissed, with no order as to costs.

C. V. BHADANG, J.

ssk