

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## APPELLATE SIDE

## CRIMINAL WRIT PETITION NO. 827 OF 2014

Shailesh Haridas Bathiya .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

Mr. Arshad Shaikh a/w Sanjay Udeshi a/w Netaji Gawade i/b M/s.  
Sanjay Udeshi & Co., Advocate for the petitioner  
Mr. Ajay Patil, APP for the respondent-State.

CORAM:-M.L. TAHALIYANI, J.  
DATED : -14/01/2015

P.C.

Admit. Respondents waive service. By consent heard  
finally.

2 Heard learned counsel for the petitioner and learned  
APP for the respondent-State.

3 The petitioner in these two writ petitions is facing trial  
for the offence punishable under section 138 of the Negotiable  
Instruments Act, in the Court of Metropolitan Magistrate, 58<sup>th</sup> Court,  
Bandra, Mumbai. Respondent No. 2 Mrs. Saroj V. Barasia, is the

complainant and respondent No. 3 Tricom India Ltd. is the formal party. The petitioner is alleged to be one of the Directors of the said Company. Respondent No. 2 in her complaint had alleged that she had advanced loan of Rs.06 lacs to the respondent No. 3 Tricom India Ltd. on the basis of representations made by the petitioner and other Directors who are the accused in the criminal complaint case No. 323/SS/2013. The accused had issued a cheque of Rs.06 lacs drawn on State Bank of India, Andheri Branch, Mumbai, in discharge of their liability. The cheque was dishonoured for 'want of sufficient funds'. A statutory notice was issued to the petitioner and other accused. Since the payment was not made a criminal complaint has been filed against the petitioner and other accused.

4                Similarly in Criminal Writ Petition No. 826 of 2013 also a loan of Rs.10 lacs was advanced and three cheques were allegedly issued by the petitioner and other accused which were dishonoured.

5                The issue which has arisen for determination before this Court in both the petitions is as to whether the petitioner could have been prosecuted by the respondent No. 3. The petitioner

claims that he had resigned from the post of Directors on 25<sup>th</sup> of May, 2010 and that he had nothing to do with the alleged transaction between the respondent No. 2 and Tricom India Ltd. . A certified true copy of Form No. 32 is filed by the learned counsel for the petitioner, the same is taken on record and marked “X”.

6           The respondent No. 2 has not appeared despite the services of notice. Therefore, it appears that she is no more interested in prosecuting the case against the petitioner in the trial court. In view of the statement made by the petitioner on oath and production of the certified true copy of Form No. 32, I am of the view that the proceedings against the petitioner before the Court of Metropolitan Magistrate need to be quashed. Hence I pass the following order:

The proceedings against the petitioner for the offence punishable under section 138 of the Negotiable Instruments Act, vide criminal complaint cases No. 322/SS/2013 and 323/SS/2013 shall stand quashed. The bail bonds of the petitioner, if any, shall stand cancelled.

The petition stands disposed of.

md.saleem

(JUDGE)