

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.326 OF 2011

M/s. Marksans Pharma Ltd.

...Applicant

Versus

The State of Maharashtra & Ors.

...Respondents

.....

Mr. T.J. Pandian for the Applicant.

Mr. Kishor N. Bhatia for Respondent Nos.2 and 3.

Mr. Jatin P. Shah for Respondent No.4.

Ms R.V. Newton, APP for Respondent No.1- State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE :5th OCTOBER, 2015.

P. C. :

At the outset the learned counsel for the Applicant seeks leave to amend the cause title so as to drop the Respondent No.4 (original accused No.3). Leave is granted. Cause title be amended accordingly.

2. The Applicant herein is the original complainant in C.C. No.492/SS/2004 filed before the Metropolitan Magistrate, 12th Court, Bandra, Mumbai, under section 138 of the Negotiable Instruments Act.

3. The case of the complainant is that the Respondent No.2 and 3 i.e. original accused Nos.1 and 2 were liable to pay to the complainant -Company sum of Rs.13, 07, 657/- towards the value of the goods supplied under various challans. It is further alleged that the cheques issued towards the said consideration were dishonoured and despite receipt of the statutory notice, cheque amount was not paid. Hence, proceedings were initiated under section 138 of the Negotiable Instruments Act.

4. Upon being served with summons the Respondent Nos.2 and 3 i.e. accused Nos.1 and 2 put in their appearance. Upon considering the evidence on record, the learned Magistrate has dismissed the complaint basically on the ground that the complainant had not proved the valid authorisation in favour of Rajesh Shiramabekar. The learned Magistrate has also held that the complainant has failed to prove that the cheque was issued towards discharge of legally enforceable debt.

5. I have gone through the notes of evidence as well as other documents placed on record. In my considered view it is *prima facie* seen that Respondent No.1 has not specifically raised the issue of

authority even otherwise as held by the Apex Court that such procedural defects are curable and cannot be allowed to defend the substantive rights and to cause injustice to the parties. The evidence also *prima facie* reveals that the accused have admitted having received the goods specified in the challans, details of which are given in para No.12 of the impugned judgment. In my considered view, arguable points are raised. Hence, leave is granted. Appeal is admitted.

6. The Respondent No.3 to furnish bail bond of Rs.15,000/- with one surety in the like amount or cash surety to the satisfaction of the learned Metropolitan Magistrate, 12th Court, Bandra, Mumbai.

7. The record and proceedings be returned to the Court of the learned Metropolitan Magistrate, 12th Court, Bandra, Mumbai for the purpose of obtaining the bail bonds.

(ANUJA PRABHUDESSAI, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment /order.