IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1341 OF 2014

Snehal R. Jagdale ..Petitioner

v/s.

Utkarsh Mirani & Ors. ..Respondents

Mr.M.V.Gopal for the Petitioner.
Mrs. Yashashree Sutrale, for the Respondent no.1
Mr. Rajesh More, APP for the State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : SEPTEMBER 08, 2015.

P.C.

1. Rule. Rule made returnable forthwith.

2. The petitioner herein was the accused no.1 in C.C.No.4300076/SS/2013 pending on the file of the learned Metropolitan Magistrate's 43rd Court, Borivali, Mumbai. The said complaint was filed by the respondent no.1 against the petitioner and her husband Milind Surve- the respondent no.2 herein for the offence

punishable under Section 138 of the Negotiable Instruments Act. By order dated 1th February, 2013 the learned Metropolitan Magistrate has issued process under Section 138 of the Negotiable instruments Act against the petitioner and her husband. Aggrieved by the same, the petitioner has filed this petition.

3. It is the case of the complainant tht the petitioner and her husband I.e. the respondent no.2, had purchased a flat bearing No. E/1117 Rock Enclave, Opp. Joy Ice Cream Factory, Near Hindustan Naka, Charkop, Kandivali (W), Mumbai 400 067 and had accordingly entered into agreement for sale dated 25.4.2007. It is further stated that the petitioner and her husband had undertaken to pay the amount towards the works contract tax viz. VAT on the said flat premises to M/s. E.B.R Enterprises. The complainant had further alleged that both the accused had executed in writing an undertaking in favour of M/s. E.B.R. Enterprises, and in compliance of the terms and conditions stipulated in the said undertaking, the accused had issued post dated cheques bearing no.223278 dated 29.10.2012 for Rs. 2,16,656 towards work contract tax in favour of M/s. E.B.R

Enterprises. The said cheque was deposited, but was dishonoured with remark “payment stopped”. Statutory notice was issued. However, the accused denied liability to pay any amount. The respondent no.1-complainant therefore filed complaint under Section 138 of the Negotiable Instruments Act.

4. Section 138 of Negotiable Instruments Act, 1881 reads as follows:-

> [18] [138 Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [19] [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

5. Perusal of the said sections 138 and 141 of the Negotiable Instruments Act, 1881 reveals that except in the cases covered by Section 141 of N.I.Act, the proceeding under Section 138 of the Negotiable Instruments Act can be filed only against the person who

has drawn the cheque on account maintained by him. In the instant case, it is not in dispute that the cheque was drawn by Milind Surve. The petitioner herein was not a signatory to the cheque. Hence the petitioner cannot be prosecuted for the offence under Section 138 of the Negotiable Instruments Act for the reason that her husband had issued the cheque or that she had guaranted repayment of the loan.

6. Under the circumstnces, the petition is partly allowed. The order dated 11th February, 2013 is quashed qua the petitioner.

(ANUJA PRABHUDESSAI, J.)

CERTIFICATE

Certified to be true and correct as per the original signed judgment/order.