

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 987 OF 2015

1 A.R. Boothalingam Pillai.
2 P. Palace Durai. ... Applicants.

Versus

The State of Maharashtra. ... Respondent.

Mr. Kiran Kulkarni i/b. Kulkarni & Associates, advocate for Applicants.

Mr. Osman A. Chishty, advocate for intervenor.

Mrs. P.P. Shinde, APP for State.

Mr. S.S. Kumbhar, API, Wadala T.T. Police Station, Mumbai.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 29, 2015

P.C.:

1 Heard the learned Counsel for the applicants and the learned
APP for State. Perused the papers.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicants herein are apprehending their arrest in Crime No. 354 of 2013 registered at Wadala T.T. Police Station on 24/1/2013 for offence punishable under Section 380, 420, 511 read with 34 of the Indian Penal Code.

3 It is the case of the prosecution that on 24/11/2013 one M. Ruben Nadar lodged a report at the police station alleging therein that he was holding joint account with his wife in Tamil Nadu Merchantile Limited, Mumbai branch. The cheque was presented which was purportedly signed by his wife Chandrakala for an amount of Rs. 22 Lakhs. The bank has given intimation to the informant about the receipt of the said cheque presented for encashment. The complainant had soon realised that he had not issued the cheque to any person called A.R. Boothalingam Pillai and he was not aware of existence of such person. He had immediately taken steps and directed the bank to stop the payment and accordingly, the payment was stopped thereafter. On 2/7/2013 Chandrakala had issued a

notice to the applicant No. 1 informing him that her husband had issued stop payment notice to bank for the aforesaid cheque. She had specifically stated that one I. Kezhson, friend of Mr. Ruben had taken away cheques which were signed and kept by Chandrakala. It was also demonstrated that the applicant No. 1 had taken the said cheques from Mr. I. Kezhson and utilised the cheque for his personal use. The applicant No. 1 had also issued statutory notice to Chandrakala under Section 138 of the Negotiable Instruments Act calling upon them to make payment in respect of disputed cheques which were dishonoured. The said notice is dated 6/7/2013. That the notice was replied. It is the contention of the complainant that his wife Chandrakala had signed blank cheques which were stolen by the brother of Ruben Nadar, Mr. Augustin Gnanadhas and he had handed over the said cheque to I. Kezhson, which were further misused by the applicant No. 1.

4 The learned Counsel for the applicants submits that even according to the complainant, the cheque book which contains the

disputed cheque was issued by the bank in the year 2011. That the applicant No. 2 had left the job in the year 2010. He could not have stolen the cheque, which was furnished to the complainant by the bank in the year 2011. According to the learned Counsel for the applicant, the complainant has undertaken the present exercise and has initiated criminal action against the applicants only to waive of the liability of Rs. 22 Lakhs, which the firm has to pay towards legally enforceable debt.

5 As against this, the learned Counsel for the complainant/intervenor submits that it is apparent on the face of the record that the complainant was in no way concerned with the applicant No. 1 and therefore, there was no occasion to issue the cheque in his favour either by himself or by his wife.

6 Perused the papers of investigation, more particularly, disputed cheque appears to be in the handwriting of the same person. There is nothing to indicate that the contents of the cheque have been

subsequently filled in. The complainant does not deny the signature on the said cheque and however, contends that the said cheques were stolen. It is admitted position that the cheques are dated 26/6/2013.

7 The applicants had filed Writ Petition No. 2585 of 2014 before the Hon'ble High Court at Mumbai seeking quashing of FIR on the basis of which Crime No. 354 of 2013 was registered at Wadala T.T. Police Station. It is pertinent to note that a similar complaint was filed at Nagercoil Police station in Tamil Nadu. That in the said complaint, the complainant had categorically alleged that his brother had mis-used the cheque by giving to one I. Kezhson. The Hon'ble Division Bench of this Court had declined to quash the FIR on the ground that although dissimilar contentions have been raised in two FIR i.e. one lodged at Nagercoil Police Station at Tamil Nadu and other at Wadala T.T. Police Station, Mumbai, no case for quashing of FIR is made out.

8 In any case, at present, it is not the contention of the complainant that it is the applicant No. 1 who had stolen the cheque from his office and had presented it for encashment.

9 The learned Counsel for the complainant submits that the said cheque was stolen by applicant No. 2, who had quit the job of the complainant in the year 2010 itself.

10 Taking into consideration all these aspects, more particularly the fact that the whole dispute is subjudiced in a proceedings under Section 138 of the N.I. Act, it would not be proper for this Court to record a finding of fact in the present application, which is restricted to consider the prayer under Section 438 of the Code of Criminal Procedure, 1973. Suffice it to say that the custodial interrogation would not be imperative. Hence, the applicants deserve grant of pre-arrest bail.

11 It is made clear that the observations made hereinabove are restricted to an application under Section 438 of the Code of Criminal Procedure, 1973. The same shall not be considered while deciding the application for discharge or for quashing of FIR or at the time trial. The learned Trial Court shall decide the matter uninfluenced by the above said observations and arrive at a conclusion only on the basis of the substantive evidence adduced by the prosecution at the time of trial.

12 Hence, following order is passed:

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest, he applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- each and one or more sureties in the like amount.
- (iii) The applicants shall report to the concerned police station from 3/8/2015 to 8/8/2015 between 10 a.m. to 1 p.m. alongwith their

bank statements and all other relevant documents and cooperate with the investigating officer to the best of their capacity.

13 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)