

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4835 OF 2004
WITH
CRIMINAL APPLICATION NO.4717 OF 2004
WITH
CRIMINAL APPLICATION NO.251 OF 2013
IN
CRIMINAL APPLICATION NO.4717 OF 2004
WITH
CRIMINAL APPLICATION NO.4836 OF 2004
WITH
CRIMINAL APPLICATION NO.253 OF 2013
IN
CRIMINAL APPLICATION NO.4836 OF 2004
WITH
CRIMINAL APPLICATION NO.4837 OF 2004
WITH
CRIMINAL APPLICATION NO.254 OF 2013
IN
CRIMINAL APPLICATION NO.4837 OF 2004

Mr.Vijay K. Shroff

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

.....

Mr. Vilas A. Jadhav with Mr. P.D. Sampat i/b. Mr. Vinod Singh
for the Applicant.

Mr. Jatin Shah i/b. Mr. S.S. Parab for Respondent No.2.

Mr. Rajesh More, APP for Respondent No.1-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 26th OCTOBER, 2015.

P. C. :

The Applicant herein has challenged the order dated 24th

August, 2004 of issuance of process under section 138 of the Negotiable Instruments Act.

2. Heard the learned counsel for the Applicant and the learned counsel for the Respondent No.2.

3. The learned counsel for the Applicant has submitted that the averments made in the complaint do not satisfy the ingredients of section 141 of the Negotiable Instruments Act. He has relied upon the judgment of the Hon'ble Apex Court in **S.M.S. Pharmaceuticals Ltd. V/s. Neeta Bhalla & Anr. AIR 2010 SC 2835, Gunmala Sales P (Ltd.) V/s. Anu Mehta 2015 (1) SCC 103.**

4. The learned counsel for the Respondent No.2 has submitted that total five cases were filed for the offences punishable under section 138 of the Negotiable Instruments Act. All these cases were arising from the cheques issued in respect of the same transaction. Criminal applications No.5311 of 2004 and 5310 of 2004, arising from C.C. No.633/S/2003 (new No.3942/SS/2012) were already dismissed by this Court by order dated 20th December, 2005. The said judgment was challenged before the Hon'ble Supreme Court. He has submitted that the Hon'ble Apex Court has dismissed the said appeals. He has

placed reliance on the decision of the Hon'ble Apex Court in **Paresh P. Rajda V/s. State of Maharashtra & Anr. (2008) 7 SCC 442.**

5. I have considered the submissions advanced by the learned counsel for the respective parties. It is not in dispute that two other applications being criminal application Nos.5311 of 2004 and 5310 of 2004, arising from the same transaction and which contained similar averments were dismissed by this Court by order dated 20th December, 2005. The said order was challenged before the Apex Court. The Apex Court in **Paresh P. Rajda V/s. State of Maharashtra & Anr. (supra)** after considering the decision in **S.M.S. Pharmaceuticals Vs. Neeta Bhalla (2007) 2 SCC (70)** has held that there are clear allegations against both the Appellants-accused to the effect that they were officers and responsible for the affairs of the company. The Apex Court has held that at a stage where the trial has not yet started, it would be inappropriate to quash the proceedings against them. In the light of the decision of the Hon'ble Apex Court in **Paresh Rajda Vs. State of Maharashtra & Anr. (supra)**, I do not find it necessary to go into the merits of the case. Hence, the applications are dismissed leaving open all the points and contentions to be raised before the Trial Court.

(ANUJA PRABHUDESSAI, J.)