IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3081 OF 2014

Narsimhan Krishnan .. Petitioner
v/s.
State of Maharashtra & Ors. ..Respondents

Mr. Arshad Shaikh, Sr. Counsel a/w Ms. Radha Ved i/b Sanjay Udeshi & Co. for the petitioner
Mr. Abdul Kader Millwala for the respondent
Mrs. R.V. Newton, APP for the respondent State

CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 14th OCTOBER, 2015.

P.C.

1. Heard the learned Counsels for the respective parties. Rule. By consent, Rule is made returnable forthwith.

2. The petitioner, the accused no.5 in C.C.No.2996/SS/2012, pending on the file of the learned Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai, has by this petition challenged the order dated 10.04.2014 whereby the learned Additional Sessions Judge, dismissed the Revision Application No.656 of 2013 and has thus rejected the prayer to quash the order of issuance of process under Section 138 of the N.I. Act.

3. The brief facts necessary to decide the petition are as under:-

The respondent no.2 complainant had filed a complaint against the accused no.1 company and its directors for the offence under Section 138 of the N.I. Act. The respondent no.2 complainant had alleged that it had advanced Inter-Corporate Loan for a sum of Rs.1,00,00,000/- (Rupees one crore) to the accused no.1 company and executed letter of undertaking and Inter Corporate Deposit Receipts dated 21.04.2012 and 25.04.2012. The respondent no.2 complainant had further averred that the present petitioner, who has been arrayed as accused no.5, and the other accused were the Directors, Chairman, Vice Chairman and authorized signatory of the accused no.1 company and were liable for the day-to-day affairs of the accused no.1 company.

4. The respondent no.2 complainant has stated that the accused no.1 company through its authorized signatory had issued Cheque No.002252 dated 31.08.2012 for Rs.1 crore towards repayment of Inter-Corporate Deposit. The said cheque was deposited in the bank but was dishonoured for "Insufficient Funds". The statutory notice was issued to the accused no.1 company and its directors. Having failed to pay the amount within the stipulated time, the respondent no.2 complainant initiated proceedings under Section 138 r/w 141 of the N.I. Act.

5. By order dated 28.03.2013, the learned Magistrate issued process against the petitioner and the other accused for the offence under Section 138 of the N.I. Act. The petitioner herein had challenged the said order before the Sessions Court in Criminal Revision Application No.656 of 2013. The said Criminal Revision came to be dismissed vide impugned judgment dated 10.04.2014. Relying upon the decision of this Court in ***Suhas Bhand Vs. State of Maharashtra & Anr., 2009 All MR (Cri.)2614,*** the learned Sessions Judge held that the petitioner was the Managing Director of the accused no.1 company. Though the Form no.32 reveals that the petitioner had resigned w.e.f. 20.07.2012, the respondent no.2 has disputed the factum of resignation and as such the said fact will have to be decided on merits in the course of the trial. Being aggrieved by the said order, the petitioner has filed this petition under Article 226 of the Constitution of India, under Section 482 of the Cr.P.C.

6. Mr. Shaikh, the learned Senior Counsel for the petitioner submitted that the learned Sessions Judge has dismissed the Revision Application relying upon the judgment in the case of ***Suhas Bhand (Supra).,*** the facts of which are entirely different. He contents that the ratio laid down in the said decision is not applicable to the facts of the present case.

7. The learned senior Counsel for the petitioner submitted that the subject cheque was issued on 31.08.2012. While the petitioner had tendered his resignation on 30.03.2012. The said resignation was accepted on 20.07.2012 and form 32 under the Companies Act was filed before the Registrar of Companies much before the issuance of cheque.

8. The learned senior Counsel for the petitioner contends that as on the date of offence, the petitioner was not associated with the respondent no.2 company and hence, cannot be held liable for the offence alleged to have been committed by the accused no.1 company. In support of his submissions, he has relied upon the decision in the case of ***Anita Malhotra Vs. Apparel Export Promotion Council & Anr. (2012) 1 SCC 520*** and ***National Small Industries Corporation Ltd. Vs. Harmeet Singh Paintal & Anr. (2010) 3 SCC 330***.

9. Mr. Millwala, the learned Counsel for the respondent has submitted that the petitioner was the Managing Director of the respondent no.2 company and was aware of the actual transaction. He has further submitted that the petitioner's name was inserted in Form 32 on 21st April, 2012. The veracity of Form 32 and the questions whether the petitioner had resigned prior to the date of offence or whether was in charge of and responsible for the conduct of

the business of the company on the date of the offence, is a question which would depend on the evidence to be adduced during trial. The learned Counsel for the respondent further submitted that a *prima-facie* case has been made out and the order does not merit interference.

10. At the outset, it may be mentioned that the petitioner herein is arrayed as an accused as a Managing Director of accused no.1 company, for the offence alleged to have been committed by the accused no.1 company. Section 141 of the N.I. Act, which deals with offence by companies, reads as under :-

> *"**Section 141**. Offences by companies.*
> *(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence: [Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled*

by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]"

11. A plain reading of this section reveals that vicarious liability can be fastened on a person who at the time of the offence was committed was incharge of and responsible to the company for the conduct of the business of the company as well as the company. In the instant case, the petitioner is arrayed as an accused as a Managing Director of accused no.1 company. The petitioner has however, stated that he had already resigned as a Managing Director of the company and as on the date of the offence he was not associated with the company and as such cannot be held vicariously liable for the offence committed by the company.

12. In the case of ***Gunmala Sales Pvt. Ltd. vs. Anu Mehta and Ors. Dated 17.10.2014*** the Apex Court after considering the decision in the case of SMS Pharmaceuticals (supra), and several previous judgments on the question has summarized the law as under:

> "33. (*a) Once in a complaint filed under* Section 138 *read with* Section 141 *of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director;*
>
> *b) If a petition is filed under* Section 482 *of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse*

to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.

In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about role of the Director in the complaint. It may do so having come across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of the process of the court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed;

d) *No restriction can be placed on the High Court's powers under* Section 482 *of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but, nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director."*

13. In the present case, the petitioner has placed on record the resignation

letter dated 30.03.2012 addressed to the Board of Directors of accused no.1 company, which reads as under :-

> *"March 30, 2012*
>
> *The Board of Directors,*
> *Deccan Chronicle Holdings Limited*
> *36, Sarojini Devi Road,*
> *Secunderabad – 500 003*
>
> *Dear Sirs*
>
> *Due to personal reasons, I am unable to continue to be on the Board of Directors of the Company.*
>
> *I hereby resign from the directorship of the company and also as managing director with immediate effect. Please arrange to file necessary e-form with the Registrar of Companies for the same.*
>
> *Thanking you*
>
> *Yours faithfully*
> *sd/-*
> *N. Krishnan"*

14. The petitioner has also placed on record the extract of the minutes of the resolution passed at the meeting of the Board of Directors held on 20th July, 2012, which reads as under :-

> *"Deccan Chronicle*
> *Extracts of the Minutes of the Resolution passed at the meeting of the Board of Directors of Deccan Chronicle Holdings Limited held on 20th July, 2012 at Flat No.105, Silver Arch Apartment, 22 Firoz Shah Road, New Delhi – 110 001.*
>
> *Acceptance of Resignation of Sri. N. Krishnan, as Director*

> *"RESOLVED THAT the resignation of Sri. N. Krishnan from the directorship of the Company be and is hereby accepted with effect from 20.07.2012.*
> *RESOLVED FURTHER THAT the Board placed on record its appreciation for the services rendered by Sri. N Krishnan during his tenure as Director of the Company.*
> *RESOLVED FURTHER THAT Sri T. Vinayak Ravi Reddy, Vice Chairman and Sri. P.K. Iyer, Vice Chairman of the Company be and is hereby severally authorized to file the necessary form with the Registrar of Companies and to do all such acts, deeds and things as may be necessary to give effect to this resolution."*

15. The accused no.1 company had informed the Registrar of Companies in the prescribed form in Form 32 about the resignation of the petitioner from the post of Director of the company w.e.f. 20.07.2012. The resignation letter, resolution as well as Form-32 reveal that the petitioner had resigned from the company as a Managing Director w.e.f. 20.07.2012. The learned trial Judge has not relied upon the said documents mainly on the ground that the respondent complainant has disputed the factum of resignation and the same has to be decided on merits. In this context, it is advantageous to refer to the decision in the case of ***Harshendra Kumar D. Vs. Rebatilata Koley & Ors. (2011) 3 SCC 351.*** The relevant paragraphs read thus :-

> *"16. Every company is required to keep at its registered office a register of its Directors, Managing Director, manager and secretary containing the particulars with respect to each of them as set out in clause (a) to (e) of sub-section (1) of Section 303 of the Companies Act, 1956. Sub-section (2) of Section 303 mandates every company to send to the Registrar a return in duplicate containing the particulars specified in the register. Any change*

among its Directors, Managing Directors, managers or secretaries specifying the date of change is also required to be furnished to the Registrar of Companies in the prescribed form within 30 days of such change. There is, thus, statutory requirement of informing the Registrar of Companies about change among Directors of the company."

17. In this view of the matter, in our opinion, it must be held that a Director, whose resignation has been accepted by the company and that has been duly notified to the Registrar of Companies, cannot be made accountable and fastened with liability for anything done by the company after the acceptance of his resignation. The words "every persons who, at the time of offence was committed", occurring in Section 141(1) of the Negotiable Instrument Act are not without significance and these words indicate that criminal liability of a Director must be determined on the date the offence is alleged to have been committed."

16. Similarly, in the case of ***Anita Malhotra Vs. Apparel Export Promotion Council & Anr. (2012) 1 SCC 520***, the Apex Court held that :-

"20. As rightly stated so, though it is not proper for the High Court to consider the defence of the accused or conduct a roving inquiry in respect of merits of the accusation, but if on the face of the document which is beyond suspicion or doubt, placed by the accused and if it is considered that the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction under Section 482 of the Code."

17. In the instant case, there are no averments or allegations in the complaint that the resignation or the Form-32 were forged and fabricated. Apart from a bald statement, the respondent no.2 has not been able to even *prima-facie* point out any material, which can cast doubt as regards

genuineness of the resignation letter, acceptance of resignation as well as Form 32 which was submitted before the Registrar of Companies in accordance with the provisions of the Companies Act. There is also no *prima-facie* material to show that after submitting the said resignation, the petitioner was in any manner involved with the accused no.1 company. In the absence of such material, the genuineness of Form 32 could not have been doubted and the burden could not have been shifted on the petitioner accused to prove the authenticity of the said documents.

18. The material on record indicates that the petitioner had already resigned prior to the issuance of the cheque. He was not in charge or responsible for the company's day to day affairs as on the date of offence and hence he could not be prosecuted for the offence under Section 138 of the Negotiable Instrument Act with the aid of Section 141.

19. Under the circumstances, and in view of the discussion supra, the petition is allowed. The impugned order dated 10.04.2014 passed by the learned Sessions Judge, Mumbai in Revision Application No.656 of 2013 is quashed and set aside qua the petitioner.

(ANUJA PRABHUDESSAI, J.)