

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3505 OF 2014

Nipa Gagan Mangat .. Applicant
-Versus-
The State of Maharashtra & Anr. .. Respondents

Mr.Harshad H. Ponda with Pranav Badheka i/b. Nipa S. Gupte for
applicant
Mr.A.P.Mundargi, Senior Advocate with Pravina Kanani for
respondent No.2
Mr.V.B.K.Deshmukh, APP for State.

CORAM : M.L.TAHILIYANI, J.

DATE : 21st January 2015.

P.C.

1] This application shall be converted into revision application and be registered accordingly.

2] The revision applicant has moved this court feeling aggrieved by the judgement and order passed by the sessions court in Criminal Revision application No.7 of 2014 filed by the respondent No.2. The respondent No.2 (accused No.3) was accused No.3 in Criminal Case No.4302651/SS/2013. He was facing trial for the

offence punishable under section 138 of N.I. Act along with accused No.1 (M/s.Euro Solo Energy Sstems Pvt. Ltd.) and Accused No.2, Nemji Kanji Chheda. The learned Magistrate, after recording statement of the applicant, issued process against all the three accused including respondent No.2.

3] The respondent No.2 moved the sessions court for setting aside the order of issuance of process on the ground that he was not responsible for conduct of business of the company – accused No.1. The learned Additional Sessions Judge accepted the plea and set aside the order passed by the Magistrate against the respondent No.2. It was held by the Additional Sessions Judge that there were no sufficient averments against the respondent No.2 in the complaint.

4] I have heard Mr.Harshad Ponda learned Advocate for applicant, Mr.A.P.Mundargi, learned Senior Counsel for respondent No.2 and Mr.Deshmukh, learned APP for State.

5] It is submitted by Mr.Ponda, learned Counsel for applicant that

there are sufficient averments in the complaint. It is brought to my notice that the allegations against the accused No.2 and respondent No.2 (accused No.3) are similar. The loan amount taken by the accused No.1 was Rs.10 Crores. It is alleged that the accused No.2 and respondent No.2 both had approached the applicant for grant of loan. It is his submission that these are more than sufficient averments to make the respondent No.2 vicariously liable along with the company – accused No.1 under section 141 of the N.I. Act.

6] Mr.Mundargi, learned Senior Advocate submitted that these averments are not sufficient to hold that the respondent No.2 was responsible for the conduct of business of the company. In this regard, it may be mentioned here that it is not the case that bald allegations are made by the applicant against the accused No.2 and respondent No.2. The applicant has specifically narrated the role played by accused No.2 and respondent no.2 (accused No.3) on behalf of accused No.1. This is what is required to make the Director or partner responsible vicariously in a case under section 138 of the N.I.Act. In my opinion, the learned Sessions Judge has committed error in setting aside the order passed by the Magistrate.

In view thereof, I pass the following order:-

- (i) The application is allowed.
- (ii) The order passed by the learned Sessions Judge in Revision Application No.7 of 2014 is set aside.
- (iii) The order passed by the Magistrate in Criminal Case No.4302651/SS/13 issuing process against respondent no.2 (accused No.3) is restored. Application stands disposed of accordingly.

(M.L.TAHILIYANI, J.)