IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRI. WRIT PETITION NO. 4220 OF 2015

Mr. Ram Kishore Mangal & Ors. … Petitioners.

V/s.

The State of Maharashtra & Anr. … Respondents.

Mr. J. S. Kini i/by Mr. Suresh Dubey, Advocate for the Petitioners.
Mr. D. P. Adsule, APP for the State.
Mr. Sanjog Parab a/with Mr. Hrishikesh Ambre i/by Parab & Associates, for Respondent No.2.

CORAM : A.V. NIRGUDE, J.

DATE : 14th DECEMBER, 2015.

P.C. :

1 This petition deserves to be dismissed at the admission stage. It arose from following facts :

2 Prior to January, 2014, a cheque issued by the Respondent No.2-Company of which the petitioners are directors, got bounced and thereafter, a notice was issued as required under section 138 of the Negotiable Instruments Act, 1881. The petitioners and other accused did not sent any reply to the notice and so a complaint was lodged against the company manager, director, joint managing director, who is also signatory to the cheque in question and other directors

who are accused nos. 3, 5 to 9 and company secretary, who is accused no.10. Animus statement is made against the accused nos. 3, 5 to 10 that though they were directors and officers of the company, were authorized signatories of the company and that they were also responsible for the day-to-day conduct of the affairs and management of the company. It is also alleged that they actively participated in the negotiations, finalizing all the previous transactions etc.. On the face of it, I am not convinced that what is stated against accused nos. 3, 5 to 10 is sufficient for initiating action against them. I am making this observations after perusal of sub-section 2 of Section 141 of the Negotiable Instruments Act. Section 141 reads as under :

> "**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.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this section,

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.]

I am giving importance to the underlying portion in sub-section 2 of section 141. The statutory provision highlighted above clearly indicates that the complainant must lodge and then prove that an individual accused, either by his consent or connivance or neglect, had committed an offence punishable under the said provisions of the Act. In a case of this nature when a company is an accused, besides the company manager, director, the signatories of the cheque are certainly liable to be prosecuted for the offence punishable under section 138 of the Act. But if other officers and directors are made party to the compliant, the complainant must state as to what such accused individually have had done which would amount to consent or connivance or neglect on their part. Such averments should be made against each of such accused separately. In my view, it is not enough to state that all of them were involved in day-to-day business of the company etc.. In my view, this is a too vague statement. What sub-section 2 requires is to allege an individual act which would amount to consent or connivance and/or neglect attributable to an individual. However, this aspect of the case would not held the petitioners as the accused because of the following reasons :

3 In this case, after the complaint was filed on 7th January, 2014, a process was issued against all the accused. Within time, the accused filed a revision, challenging the issuance of process. But unfortunately, during pendency of the proceedings of the criminal revision before the learned Sessions Court, there was no stay ordered to the proceedings before the trial court. Therefore,on 17.06.2014, the learned Magistrate thought it fit to record plea of the accused. The learned Sessions Judge dismissed the revision on 7th August, 2014. The petitioners did not approach this court within reasonable time. Thereafter, they came to this court only in October, 2015 i.e. almost 14 months after the impugned order

was passed. This delay would go against the petitioners-accused. There is no justification for delaying the proceedings before this court. As indicated above, they have reasonably a good case against the order of issuance of process. But now the trial is already began. As stated above, the plea was recorded way back in June, 2014. The trial court is now waiting for the complainant to lead evidence. If they show sufficient alertness, the trial would be over soon. The Chapter 20 of the Criminal Procedure Code kept the length of the trial very short and, therefore, this court as well as Supreme Court in the case of **Subramanium Sethuraman** vs. **State of Maharashtra & Anr.**, reported in **2004 Cri. L. J. 4609** clearly indicate that once plea is recorded under section 251 which is the first section of the Chapter 20, the Magistrate should continue with the trial and conclude it by judgment either passed under section 253 or under section 255.

4 In view of the above, the petition stands dismissed.

(A.V. NIRGUDE, J.)

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