

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 4356 OF 2014

Latiff timber and Plywood Centre .. Petitioner

v/s.

State of Maharashtra & Ors. ..Respondents

Mr. M.A. Vaid a/w Ms. Vidhya N. Shet i/b Vaid & Associates for the
petitioner

Mrs. R.V. Newton, APP for respondent State

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 19th OCTOBER, 2015.**

PC.

1. The petitioner herein, who was the complainant in C.C. No.3351/SS/2014 has challenged the order dated 16.10.2014 whereby the learned Magistrate, 71st Court, Mazgaon, Mumbai has dismissed the application to implead the name of Abdeali Saifee Mamaji as the proposed accused no.3.

2. The learned Counsel for the petitioner submits that the cheque was issued on behalf of the company and at the time of filing of the complaint, the petitioner was not aware as to who

was the signatory of the said cheque. He submits that the respondent no.2 was arrayed as an accused as the Director of the accused no.1 company. He claims that in fact Abdeali Saiffee Mamaji ought to have been arrayed as an accused.

3. I have perused the record and considered the submissions advanced by the learned Counsel for the petitioner. The records reveal that the complaint was filed against the accused no.1 company and one Saiffee Mamaji. The averments made in the complaint do not reveal in what capacity said Saiffee Mamaji was arrayed as an accused. Nonetheless, the process was issued against both the accused i.e. respondent no.2 and respondent no. 3 and these respondents having pleaded not guilty, trial had commenced. The complainant had adduced the evidence and statement under Section 313 of the Cr.P.C. was recorded and the respondent no.3 - accused no.2 has examined himself in defence. Based on the statement made by accused no.2, the complainant filed an application to add Abdeali Saiffee Mamaji - respondent

no.4 herein as an accused. The application does not reveal in what manner said Abdeali Saiffee Mamaji who is proposed to be arrayed as an accused no.3, was associated with accused no.1 company. The application merely states that since the accused no.1 company was not represented by any other person, summon should be issued to Abdeali Saiffee Mamaji. Needless to state that adding any person as an accused and summoning any person as an accused in a criminal case is a serious matter. The criminal law cannot be set in motion without there being any *prima-facie* material to show the involvement of such person in the crime. In the instant case, there is absolutely no material to indicate in what capacity and for what reason said Abdeali Saiffee Mamaji is sought to be arrayed as an accused. There is no *prima facie* material to show that he is associated with the accused no.1 company and is covered by Section 141 of the N.I. Act.

4. The learned Magistrate was, therefore, perfectly justified in dismissing the application. Under the circumstances, I do not find any illegality in the order passed by the learned Magistrate.

5. The Criminal Writ Petition is, therefore, dismissed.

(ANUJA PRABHUDESSAI, J.)