IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 1228 OF 2014

Ketan Krishnakant Lakhani .. Applicant

Versus

The State of Maharashtra & Anr. .. Respondents

Mr. Mahendra V. Swar, Advocate for the applicant
Smt. P. P. Bhosale, APP for the respondent
Mr. Omar Khaiyam Shaikh, Advocate for the respondent No. 2.

CORAM:-M.L. TAHALIYANI,J.
DATED :- 08/01/2015

P.C.

Admit. Respondents waive service. By consent of the parties heard finally.

2 Heard learned counsel for the applicant, learned advocate for respondent No. 1 and Smt. Bhosale, learned APP for the respondent – State.

3 The applicants are accused of the offence punishable under section 138 of the Negotiable Instruments Act and are facing trial in the Court of Metropolitan Magistrate, 7th Court, Dadar,

Mumbai. The respondent No. 2 Yes Bank Ltd. is the complainant in the said case. The complaint case No. 2459/SS/12 was filed by the respondent No. 2 against the applicants. It was alleged against the applicants as under:

> “3 The Accused No. 1 and 2 are herein jointly impleaded as Accused as the Accused No. 1 and 2 are directors of their Company, namely, M/s. Shree Ghanshyam Auto Parts Pvt. Ltd. who had availed the business loan facility from the Complainant Bank in name of their Company. I say that the Accused No. 1 & 2 were executed various documents and deeds while availing the Business loan facility for their said Company from the Complainant Bank. The Complainant states that in fact, the Accused No. 1 and 2 being the Directors of M/s. Shree Ghanshyam Auto Parts Pvt.Ltd. Being private limited Company, had signed and issued the cheques in question jointly from their own saving bank account for discharge of liability of its Private Limited Company and also, being the directors of said Company, they are responsible to the Company for the conduct and day to day business affair and also, they are in day to day in charge and control of the management, affairs & activities of the M/s. Shree Ghanshyam Auto Parts Pvt.

Ltd. The Complainant states that the Accused No. 1 and 2 have also jointly & severally availed the Business loan facility in the name of M/s. Shree Ghanshyam Auto Parts Pvt. Ltd. for which the Accused No. 1 and 2 have jointly & severally signed various documents & papers in their individual capacity as well as the directors of M/s. Shree Ghanshyam Auto Parts Pvt. Ltd. for availing the loan facility and thus, the Accused No. 2 and 3 are personally liable for the liability of M/s. Shree Ghanshyam Auto Parts Pvt. Ltd.

4 The Accused No. 1 and 2 are the directors of M/s. Shree Ghanshyam Auto Parts Pvt. Ltd. and by virtue thereof the Accused have jointly & severally availed the Business loan facility from the Complainant Bank vide Loan Account No. BLN000100001819 and executed various documents, deeds in respect thereof. The Complainant states that since their Company, namely, M/s. Shree Ghanshyam Auto Parts Pvt. Ltd. was inconstant default in payment of monthly installment, the Complainant Company requested its directors being Accused No. 1 & 2 to clear the liability of their Company and thus, the Accused No. 1 & 2 with intention to clear the liability of their own Company, M/s. Shree Ghanshyam Auto Parts Pvt. Ltd. & in consideration thereof and towards the repayment of the said Loan

facility availed by M/s. Shree Ghanshyam Auto Parts Pvt. Ltd. from the complainant Bank along with applicable interest & other charges thereon, towards repayment of loan amount, the Accused No. 1 & 2 issued following cheques from their own saving bank account and the description thereof is as under:

Sr. No.	Cheque No.	Amount (Rs.)	Date	Bank and Branch
1 2	657427 621780	6,19,700/- 6,19,700/-	16/07/2012 16/07/2012	Both are of HFDC Bank Ltd., Tardeo.
	Total	12,39,400/-		

The copies of the said Cheques are hereby annexed and marked **Exhibit 'A' Colly".**

4 After dishonour of both the cheques the respondent No. 1 had issued a statutory notice dated 3rd of August, 2012 which was received by the applicants on 8th of August, 2012. The payment was not received by respondent No. 1 after the expiry of statutory limit laid down under the Act. Therefore, a criminal complaint against both the applicants was filed by the respondent No. 1. The learned trial Magistrate issued process against both the applicants. The order of the learned Magistrate was challenged in the Sessions

Court by way of filing a revision application. The revision application filed by the applicants came to be rejected on 4th of October, 2014.

5 The learned counsel for the applicants submitted that the complaint pending before the Magistrate is bad in law inasmuch a common notice was issued to both the applicants and the applicants were asked to pay the amount more than the amount of their respective cheques. He has relied upon the judgment of the Hon'ble Supreme Court reported at **(2000) 2 SCC 380 (Suman Sethi v. Ajay K. Churiwal & Anr.)**. Reliance was placed on paragraphs 7 and 8 of the said judgment. I have gone through the said judgment particularly paragraphs 7,8 and 13 of the judgment. The judgment makes it very clear that, if the cheque amount is identifiable and severable the notice will not be bad in law, even if there is additional demand in the statutory notice under section 138 of the NI Act. As such the judgment of the Hon'ble Supreme Court cited (supra) does not help the applicants in any manner inasmuch as the two cheques have been separately stated in the notice and it was not difficult for the applicants to understand as to how much

amount was demanded from both the applicants. Had the applicants paid the amount of their respective cheques there could not have been any prosecution against them.

6 The second point raised by the learned counsel for the applicants is that there could not have been a common complaint against both the applicants in asmuch as two cause of actions which had arisen against both the applicants could not have been clubbed together. In this regard a reference may be made to Section 223 of Cr. P.C. which runs as under:

> "223. What persons may be charged jointly. - The following persons may be charged and tried together,namely :-
>
> (a) persons accused of the same offence committed in the course of the same transaction;
>
> (b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence; and,
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> © …......

7 The case of the applicants is covered by Section 223 (a). The same offence has been committed by the applicants No. 1

and 2, during the same transaction. Their transaction pertain to the loan obtained by the private limited company of which the applicants No. 1 and 2 were Directors. It is alleged that the cheques from savings bank account of the applicants were issued in discharge of liability of private limited company. Therefore, it can safely be said that the same offence was committed by both the applicants during the course of the same transaction, therefore, the complaint filed against both the applicants is not bad in law.

8 I do not find any substance in the criminal application. The criminal application stands dismissed.

(JUDGE)

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