IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRI. WRIT PETITION NO. 4678 OF 2015

Mr. Ram Kishore Mangal & Ors. … Petitioners.

V/s.

The State of Maharashtra & Anr. … Respondents.

Mr. J.S. Kini i/by Mr. S. Dubey, Advocate for the Petitioners.
Mr. S. H. Yadav, APP for the State.
Mr. Kezer Kharawald i/by Lex Juris for Respondent No.2.

CORAM : A.V. NIRGUDE, J.

DATE : 14th DECEMBER, 2015.

P.C. :

1 The Petitioners are the Accused Nos. 2, 4, 8, 9 and 10 in a criminal case no.3245/SS of 2014, pending before the learned Metropolitan Magistrate, 6th Court at Mazgaon, Mumbai.

2 Respondent No. 2 is the complainant. The prosecution is under section 138 of the Negotiable Instruments Act, 1881. It is a common ground that accused no.1 is also a company of which accused no. 3 is Managing Director and accused no.5 is Joint Managing Director. It is also a common ground that the cheque was issued by accused no.1 company under the signature of accused no.5. When the cheque was

bounced, a notice under section 138 of the Act was given and it was served on all accused but in vain. Thereafter, a complaint was lodged on 07th March, 2014 and the summons against all the accused including the petitioners were issued on 19th June, 2014. The Petitioners as well as some other accused challenged the order of issuance of process against them by filing a revision application before the learned Sessions Court. The learned Sessions Judge stayed the proceedings in the trial court and proceeded to hear the revision application. He partly allowed the revision application on 20th October, 2015. He allowed the revision application filed by accused nos. 11, 12 and 13 but rejected the same for the petitioners. It is the case of the petitioners that averments made in the complaint are not sufficient to proceed against them. Since this complaint is against a company, the provisions of section 141 of the Negotiable Instruments Act are relevant and are quoted below :

> "**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 :
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> 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.]

Sub-section (2) makes it necessary for complainant to lodge complaint and prove that each of the directors, managers, secretaries or other officers of the company had their consent or connivance or whose neglect attributed to the commission of offence punishable under section 138 of the Negotiable Instruments Act. In other words, the complainant must mention individual role attributable to individual accused in the complaint so as to show that each one of such accused is required to be proceeded against and punished. In other words, when an offence is committed by a company and if such offence is punishable under section 138 of the Act, the complainant may plead along with the company, its manager, director and secretary or such other individual, who by his consent or connivance or neglect has actively helped the other accused in committing the offence. Let me now examine the complaint to see as to whether any specific averment is made against the petitioners or any specific role is attributed to any of the petitioners.

3 As against petitioner no.1 (accused no.8) it is stated in the complaint that he is designated as chairman of the company. He is neither signatory nor managing director of accused no.1-company. Accused no. 4 is said to be company secretary but it is not averred in the complaint that he took personal decision or action first into the alleged commission of offence. Accused Nos. 8 to 10 are directors and also said to be authorized signatories but they admittedly did not put their signatures on the cheque in question. There are general statements that the directors had approached the complainant

for lending of money to accused no.1-company and on their assurance the loan was given. It is also alleged that all of them assured the complainant that the loan amount would be returned with interest etc.. Despite such assurance, the cheque was bounced. When the complainant lent much amount to accused no.1 company, he placed reliance on the assurances given by all the accused to him. Giving assurance was not an offence punishable under any provisions of the Negotiable Instruments Act or for that matter under the IPC. Issuance of cheque and not paying the amount of cheque even after receiving statutory notice under section 138 of the Act within the statutory period, amounts to an offence. So whoever did not repay the amount would be made accused. In this case, the cheque in question was issued by accused no.1-company and accused no. 5 was the signatory to the cheque. Accused nos. 3, 4 and 5 are admittedly looking after day-to-day business of the company. It was for them to ensure that the cheque amount, as per the demand notice, is paid back within the statutory time. It was their responsibility to abide by the obligation of time. During the statutory period given under the notice issued under section 138 of the Act if any other particular officer of the accused -company does any act which would fail the repayment of the loan amount, such officers can certainly be proceeded against besides manager, managing director and the secretary of the company. No such allegation is made against the petitioners in this case.

Therefore, the complaint cannot continue against the petitioners. The complaint shall continue against rest of the accused.

4 The writ petition is allowed in the above terms and stands disposed of accordingly.

(A.V. NIRGUDE, J.)

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