

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1012 OF 2016

Mrs. Meena w/o Pramod Bajaj ... PETITIONER

VERSUS

The State of Maharashtra & anr. ... RESPONDENTS

.....
Shri S.G. Ladda, Advocate holding for
Shri S.J. Rahate, Advocate for petitioner
Shri N.T. Bhagat, A.P.P. for respondent No.1/ State
Shri R.P. Mote, Advocate for respondent No.2
.....

WITH

CRIMINAL WRIT PETITION NO.1013 OF 2016

Mrs. Meena w/o Pramod Bajaj ... PETITIONER

VERSUS

The State of Maharashtra & anr. ... RESPONDENTS

.....
Shri S.G. Ladda, Advocate holding for
Shri S.J. Rahate, Advocate for petitioner
Shri N.T. Bhagat, A.P.P. for respondent No.1/ State
Shri R.P. Mote, Advocate for respondent No.2
.....

CORAM: N.W. SAMBRE, J.

DATED: 26th October, 2016.

ORDER :

1. The Judicial Magistrate, First Class, Aurangabad, in S.C.C. No.3936/2015, ordered issuance of process against the present petitioner for an offence punishable under Section 138 of the Negotiable Instruments Act, which was confirmed in a revision being Revision No.42/2016, by an order dated June 15, 2016. As such, the present Criminal Writ Petitions.

2. While invoking extraordinary jurisdiction of this Court, Shri Ladda, learned counsel for the petitioner would urge that the petitioner is an accused No.3 to the criminal complaint. According to him, there is no direct accusation against the present petitioner in the complaint so as to prima facie constitute an offence punishable under Section 138 of the Negotiable Instruments Act. According to him, the signatory to the cheque i.e. accused No.2 - husband of the present petitioner shall defend the case, being drawer of the cheque in question. Shri Ladda would then add that, there is also no whisper in the complaint so also in the verification that at the relevant time when the cheque was issued, the present petitioner (accused No.3) was incharge

of the affairs of the Company and was actually participated in discharging the day-to-day affairs of the Company. While inviting the attention of this Court in the matter of **S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla**, reported in **2005 AIR (SC) 3512, A.K. Singhania Vs. Gujarat State Fertilizer Co. Ltd. & anr.**, reported in **2014(1) Bom.C.R. (Cri.) (S.C.) 411**, the learned counsel would urge that the petitioner needs to be discharged by quashing the order of issuance of process.

3. Per contra, the learned counsel for the respondent No.2 complainant would invite attention of this Court to the judgment of the Apex Court in **N. Rangachari Vs. Bharat Sanchar Nigam Ltd.**, reported in **AIR 2007 SC 1682** so as to urge that the complaint has to be read as a whole and cannot be split and read to the benefit of the accused persons. According to him, the allegations are required to be considered as a whole and not in part. According to him, the complaint contains sufficient narration which speaks of specific attribution against the petitioner so did the verification and as such, the petitions are liable to be rejected as no case for interference in extraordinary jurisdiction is made out.

4. Having bestowed my thoughts to the submissions made, it is required to be noted that, upon perusal of the

complaint, which depicts a specific averment in para 2 of the complaint against the present petitioner, wherein it is claimed that petitioner is one of the Director of the Company which is accused No.1 and she is looking after day-to-day affairs of the Company i.e. accused No.1. It is then claimed that, the complainant contacted the present accused in the month of November 2014 and asked for repayment of amount of Rs.50,00,000/-. It is also claimed in the complaint that the legal notice dated 16.5.2015 was addressed to the present petitioner, however, there is no reply or denial of the liability by the present petitioner, as the notice was never replied. It is also required to be noted that, in para 9, a specific averment is made that the accused No.3 being Director of accused No.1, is looking after the day-to-day business and as such, is also required to be prosecuted for dishonour of the cheque.

5. In the backdrop of above referred conduct of the respective parties, if the law as is laid down in the judgments of S.M.S. Pharmaceuticals and A.K. Singhania is considered, what is contemplated in these two cases is, there has to be pleadings so as to constitute an offence under Negotiable Instruments Act to aver that at the time the offence was committed, the present accused was incharge of and responsible for conduct of business of the Company, is an essential requirement of Section 14 of the

Negotiable Instruments Act. In the judgment of A.K. Singhania (cited supra), in para 15, the Apex Court has observed that, no averments could be noticed in the complaint so as to suggest that the accused who were before the Apex Court at the time the offence was committed, were incharge and responsible for the conduct of the business of the Company. The Apex Court then, in para 16, observed that, in absence of any averment against the accused so as to spell out the fact that they were incharge and responsible for the conduct of business of the Company at the time the offence was committed, they cannot be held responsible for an offence under Section 138 of the Negotiable Instruments Act. If the contents/ averments in the criminal complaint in this case are perused in the backdrop of the observations made by the Apex Court, it is to be noted that there is specific pleading that the present applicant, who is accused No.3, is one of the Director of the accused No.1 Company and she is looking after the day-to-day affairs of the Company. There is also specific averment that the original complainant (respondent No.2) demanded the amount from the accused in November 2014 and the notice under Section 138 of the Negotiable Instruments Act was not replied by the accused. It is also specifically averred that the petitioner being Director of the accused No.1 Company and looking after the day-to-day business of the Company, is liable for the prosecution for an offence under

Section 138 of the Negotiable Instruments Act. On the same line, there are averments in the verification also. The said averments in the complaint and verification are in the context of the allegation that the offence under Section 138 is committed by the present petitioner and is required to be prosecuted. The claim of Shri Ladda that there has to be allegation in an unequivocal terms spelling out a specific role of the petitioner in conducting the business of the Company at the time of offence in question is not spelt out, is liable to be rejected particularly when there are specific allegations to that effect.

6. The judgment of the Apex Court in the matter of N. Rangachari (cited supra) particularly observations made in last paragraph are worth referring :

"In the case on hand, reading the complaint as a whole, it is clear that the allegations in the complaint are that at the time of at which the two dishonoured cheques were issued by the company, the appellant and another were the Directors of the Company and were incharge of the affairs of the company. It is not proper to split hairs in reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to show that at the relevant point of time the appellant and the other are not alleged to be persons incharge of the affairs of the company. Obviously, the complaint refers to the point of time when the two cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour. We have no hesitation in overruling the argument in that behalf by the learned Senior Counsel for the appellant."

7. It is also required to be noted that, the prosecution against the present petitioner - accused for an offence punishable under Section 138 of the Negotiable Instruments Act, has reached at the stage of recording of cross-examination. The matter was thereafter got adjourned by the petitioner from time to time and the order of issuance of process was questioned. Prima facie, the move on the part of the present petitioner could be termed as the one with an intention to prolong the proceedings which are pending against her before the trial Court.

8. In the backdrop of above, in my opinion, no case for interference in extraordinary jurisdiction is made out. Both the Criminal Writ Petitions with identical facts and similar orders with same parties, as such, stand dismissed.

(N.W. SAMBRE, J.)