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

CRIMINAL APPLICATION NO. 4894 OF 2015

Santosh s/o Bhila Borse,
Age: 56 years, Occu: Service & Director,
R/o: Building No. 2, Jai Gurudev Society,
II nd Floor, Near Ghorpade Chowk,
Katrapp, Badlapur (E), Thane,
Dist. Thane

..APPLICANT

VERSUS

M/s Rajni Enterprises,
Shop No. , Ist Floor, Singapore Complex,
Near Aushadhi Bhavan, Gulmandi,
Aurangabad, Tq. & Dist. Aurangabad
Through its Proprietor
Mr Dhananjay s/o Sudhakar Rao Akolkar,
Age: 44 years, Occu: Business,
R/o. Plot No. 36, Shri Niketan Colony,
Behind Hotel Amarpriti, Jalna Road,
Aurangabad

..RESPONDENT

Mr S. W. Mundhe, Advocate holding for Mr V. S. Khairnar, Advocate for applicant;
Mr S. S. Kulkarni, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 1st April, 2016

ORAL ORDER :

By the present application under section 482 of the Code of Criminal Procedure, the applicant-accused no.3 seeks quashing of the proceedings bearing Summary Case No.310325 of 2014, pending on the file of the learned Judicial Magistrate First Class (14th Court), Aurangabad.

2. The applicant is a director of a company, namely, M/s Solifom Medicare Pvt. Ltd., who had issued a cheque in favour of the respondent-

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complainant, which came to be dishonoured.

3. After service of notice under section 138 of the Negotiable Instruments Act (for short "Act") , the applicant has not bothered to reply the same, but after issuance of summons by the court, he appeared before the Court and moved an application for rejection of the complaint on the ground of want of jurisdiction. The said application/objection came to be rejected by an order dated 6th October, 2015, passed below Exh.29.

4. In the intervening period, it is noted that one of the directors of the said company moved an application seeking discharge of another director on the ground that he had resigned from the post. As a consequence, the name of director Maheshkumar Krishnamurthy (accused no.3) came to be deleted from the complaint.

5. Accused no.1 is a company, whereas accused no.2 Sonali and accused no.4 (applicant herein) are daughter and father, respectively. It is claimed by the applicant that it is the daughter of the applicant who has signed the cheque and in view thereof could be held responsible for vicarious liability under the Negotiable Instruments Act. He would then submit that there is hardly any material on record to connect the present applicant-accused no.4, demonstrating that he has actively participated in the decision making process, which had prompted the company to issue the cheque in favour of the complainant.

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6. While inviting attention of this Court to the judgment in the matter of **Shobhagmal Bankatlal Maloo & ors. vs. State of Maharashtra & ors.**, reported in **2015 (1) Bom. C.R. (Cri.) 567**, learned Counsel appearing on behalf of the applicant submits that for fastening a criminal liability, material depicting direct involvement of the accused is very much required. He would then submit that there is hardly any material which depicts that the applicant in any way is responsible for issuance of the cheque in question. Thus, according to him, the proceedings deserve to be quashed.

7. Learned Counsel appearing on behalf of the respondent submits that the attempt on the part of the applicant to protract the trial is apparent from the observations made by the learned Magistrate in an earlier order referred supra, particularly in the matter of objection raised to the jurisdiction of the Court, i.e. an order below Exh.29 passed on 6th October, 2015. He would then submit that the contents of the notice issued under section 138 of the Act, contents of the complaint, the verification statement and other documents depict that there is an active role attributed to the applicant and as the summary trial has reached at an advanced stage, i.e. cross-examination of the complainant is in progress, the present application be rejected.

8. Having considered the submissions made, it is required to be noted that admittedly the applicant is a director of accused no.1 company and was served with the notice under section 138 of the Act with a specific allegation that he had actively participated in the decision making process,

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which was not replied by him. Apart therefrom, the important aspect of which this court must take note of is, accused Sonali, who had admittedly signed the cheque is a daughter of the applicant and both of them are the only directors of the company as the third director had resigned and his name is deleted from the complaint.

9. It is then required to be noted that the learned Magistrate has noted that the applicant is trying to protract the trial by moving an application raising objection to the jurisdiction. Apart therefrom, the fact remains that in view of contents of the notice under section 138 of the Act which was not replied, the contents of the complaint filed against the applicant, the verification statement and other documents as are placed on record prima facie depict that there is direct and active participation of the applicant, who has acted in aid of his daughter Sonali, both being directors of the company for reaching to the decision that the amount as was due be paid to the complainant by issuing cheque.

10. In the wake of the above referred documents, if reliance placed by the applicant on the judgment of this Court in the matter of Shobhagmal Bankatlal Maloo (supra) is analyzed, it is to be noted that there is active participation of the applicant in the decision making process, as noted in the foregoing paragraphs. The judgment relied upon on behalf of the applicant, in my opinion, hardly supports the instant case.

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11. In view thereof, no case for interference is made out. Criminal Writ
Petition thus fails and stands rejected.

(N.W. SAMBRE, J.)

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