

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

CRIMINAL WRIT PETITION NO. 1483 OF 2015

Akola Janta Commercial Co-operative
Bank Limited, Akola
A Multi State Co-operative Scheduled Bank
Having its Branch office at Aurangabad
Through its Manager and Principal
Officer Shri Sanjay s/o Kondiram Pagare,
Age: 51 years, Occ: Service,
R/o. Aurangabad, Dist. Aurangabad. ...Petitioner

versus

1. The State of Maharashtra
2. M/s R.K. Constro Project Pvt. Ltd.
Through its Director
Ms. Meghana Sameer Mehta,
Age: 42 years, Occ: Service,
R.K. Constro Project Pvt. Limited,
R.K.B. Bhavan Plot No. 34,
Bhagyanagar, Aurangabad. ...Respondents

.....
Mr. V.B. Jadhav, Advocate h/f Mr. A.V. Hon, Advocate for petitioner
Mr. A.R. Kale, A.P.P. for respondent No. 1
.....

CORAM : N.W. SAMBRE, J.

DATE : 13th APRIL, 2016

ORAL ORDER :

Heard Mr. V.B. Jadhav, learned Counsel for the
petitioner.

2. The petitioner filed complaint case for the offence
punishable under Section 138 of the Negotiable Instruments Act vide

Summary Criminal Case No. 2666 of 2015 in the Court of learned Judicial Magistrate, First Class, Aurangabad, in which learned Magistrate has issued process on 28/07/2015. Though copy of the complaint is not placed on record, it could be gathered that accused No. 1 is Company and accused Nos. 2 and 3 are its Directors. It is not in dispute that accused No. 2 namely Sameer Mehta has signed the cheque which was issued in favour of present petitioner. The order of issuance of process was the subject matter of challenge before learned Additional Sessions Judge, Aurangabad in Criminal Revision Application No. 225 of 2015, which came to be allowed to the extent of accused No. 3 Ms. Meghana Sameer Mehta by setting aside the order of issuance of process passed against her. The order of issuance of process for the offence punishable under Section 138 of the Negotiable Instruments Act is remained to be maintained as against the Company and its Director Sameer, who is signatory to the cheque.

3. While questioning the legality and validity of the order passed in the revision, Mr. Jadhav, learned Counsel for the petitioner would strenuously urge that once it is brought on record in the complaint that accused No. 3 Ms. Meghana was Director of the Company and was continued to hold that post, hence learned Magistrate was right in issuing process for the alleged offence.

According to him, it is not possible for the petitioner bank to go into details of the Company to find out as to how accused No. 3 Ms. Meghana is responsible for decision making process of the accused No.1 Company. He then claimed that accused No. 2 is husband of accused No. 3 and the fact about issuance of cheque is well within knowledge of all three accused and as such, sought quashing of the order dated 28/07/2015, quashing the order of issuance of process against accused No. 3 Ms. Meghana.

4. With the assistance, I have perused the order passed by revisional Court, whereby the order of issuance of process is quashed as against accused No. 3. It is required to be noted that while issuing process, learned Magistrate has not dwelt upon the issue as to how the Director i.e. accused No. 3 could be held responsible when admittedly she is not signatory to the cheque. Apart from above, the revisional Court has already held that there are hardly any pleadings in the complaint, which connects the said accused No. 3 to the alleged crime in question. In absence of copy of the complaint, it could be gathered from the observations of the revisional Court that but for allegations that accused No. 3 is Director, there is no other role attributed to her in the alleged crime.

5. In the above referred background, having regard to the

liability, which is vicarious in nature in the alleged offence punishable under Section 138 of the Negotiable Instruments Act, in my opinion, learned revisional Court was right in setting aside the order of issuance of process as against accused No. 3 Ms. Meghana.

6. In view of above, no interference in extraordinary jurisdiction, is called for. The writ petition fails and stands dismissed.

[N.W. SAMBRE, J.]