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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 1098 OF 2014**

B.R. Sukale Construction ... Petitioner

Versus

Shubhankar Construction Company and Ors. ... Respondents

Mr. Shrishail Sakhare for the petitioner.

Mrs. S.V. Sonavane, APP for the State.

CORAM: NARESH H. PATIL &

A.M. BADAR, JJ.

DATED : MARCH 16, 2016.

P.C.

1. By this petition under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, petitioner M/s. B.R. Sukale Construction is praying for quashing the criminal complaint bearing No. STC/2353/2008 pending on the file of the learned Chief Judicial Magistrate, Solapur.

2. Heard learned counsel for the petitioner. According to him, petitioner is a Government Contractor and Developer. Respondent no. 1 /complainant is also a contractor by profession. Learned counsel for the petitioner further argued that respondent no.1 has filed criminal complaint

against the petitioner for the offence punishable under section 138 of the Negotiable Instruments Act, 1881 so also Special Civil Suit No. 63 of 2008 in the court of learned Civil Judge, Senior Division, Solapur for recovery of the dues. Both these cases are arising out of the same cause of action and as such according to him, criminal case is required to be quashed and set aside. In support of his contention, the learned counsel for the petitioner has placed reliance on the judgment of the Supreme Court in the matter of **Trilok Singh and Ors. Versus Satya Deo Tripathi.**¹ .

3. We have heard the learned APP for the State.

4. Perusal of the criminal complaint for the offence punishable under section 138 of the N.I. Act filed by respondent no.1 against petitioner shows that the complainant therein alleged that he has supplied material ordered by the petitioner and in order to pay the cost of the said material, the petitioner had issued a cheque for Rs.13,00,000/-. The said cheque was dishonoured on account of “Payment stopped”/”Insufficient Fund”. After issuing statutory notice, respondent no.1/complainant filed a complaint against the present petitioner for the offence punishable under section 138 of N.I. Act. It is also seen that for recovery of the amount due towards the material supplied by respondent no.1 to the petitioner, civil suit is also filed by respondent no.1 in the Court of Civil judge, Senior Division, Solapur.

¹ (1979) 4 ASCC 396

5. It is thus clear that the criminal complaint for the offence punishable under section 138 of the N.I. Act came to be filed by respondent no. 1 against the petitioner with the allegation that the cheque issued by the petitioner for discharge of legally enforceable debt came to be dishonoured because of the stopping payment and/or insufficient fund in the account of the petitioner maintained by his banker. Section 138 of the N.I. Act reads thus :

“138. Dishonor of cheque for insufficiency, etc., of funds in the accounts

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honor the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both:

PROVIDED that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation: For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability."

6. From bare perusal of these provisions, it is seen that penal provision is made and punishment for the same is also prescribed. The action of filing of the complaint under the N.I. Act is for punishing the petitioner for the criminal liability incurred by him under the provisions of section 138 of N.I. Act. As against this, the suit filed against the petitioner by respondent no.1 is for recovery of the money due. Both these actions are totally independent having totally different results. As such, it cannot be said that merely because the civil suit is filed for recovery of money due, criminal proceedings cannot lie. The criminal liability arises because of the dishonour of the cheque issued by the petitioner allegedly for the payment of legally enforceable debt.

7. The fact of case of Triloksingh and others (supra) are totally different. There was dispute between the parties relating to purchase of a truck from Sardar Harbans Singh. According to complainants therein, the amount advanced by the firm was by way of loan while according to the case of the appellants therein, it was on the basis of hire purchase agreement entered into between the parties. The dispute between the parties

was found to be purely of civil nature. However, in the case in hand, the averments made in the complaint filed by the respondent no.1 against petitioner shows commission of offence punishable under section 138 of N.I. Act on account of dishonour of cheque for payment of legally enforceable debt. In these circumstances, it cannot be said that merely because a suit for recovery of the amount due is filed, criminal proceedings cannot be initiated.

8. In the result, Petition is devoid of merits and therefore, the same is dismissed.

(A.M. BADAR, J.)

(NARESH H. PATIL,J.)