

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.225 OF 2002

M/s. Dahanu Metal Pvt. Ltd.	.. Petitioner
<i>-Versus-</i>	
State of Maharashtra & Anr.	..Respondents

Mr. J.M.Chodankar for petitioner
Mrs. A.S.Pai, APP for State.

CORAM : DR. SHALINI PHANSALKAR JOSHI, J.

DATE : 15th February 2016.

P.C.

1] By this petition, the original accused has challenged the process issued against it under section 138 of the Negotiable Instruments Act read with section 149 by the Court of Judicial Magistrate, First Class, Vashi, Navi Mumbai.

2] The submission of the learned Counsel for the petitioner is that the first demand notice was issued by the respondent complainant on 12th June 2001 which mentioned only three cheques. Thereafter, on 18th July 2001, the respondent No.2 sent another notice rectifying the contents of the earlier notice and in the said second notice, he mentioned about dishonour of one cheque for the amount of Rs.34,635/-. On the very date

itself, the respondent No.2 filed the case in the trial court without giving any opportunity to the petitioner to comply with the said notice or to reply thereto and hence, according to the learned Counsel for the petitioner, the complaint itself is not tenable.

3] The second ground on which the order of issue of process is challenged is that the respondent No.2 is a company registered under the Companies Act. The complaint on behalf of the respondent No.2 is filed by one Mr. Gyan Prakash Singh, Assistant General Manager, without having any authority to do so or without there being any resolution passed by the company, making him authorised signatory of the company. Hence, according to the learned Counsel for the petitioner on both these counts, the process issued against the petitioner by the trial court requires to be quashed and set aside.

4] In this petition, rule was issued on 3rd February 2002. Since then, the matter has appeared on several occasions. Even R & P is called for by this Court vide order 30th July 2015. However, today neither respondent No.2 nor his Counsel is present. As the matter is pending since long and that too order of interim stay of the proceedings before the trial court is in operation and considering the submissions advanced by the learned Counsel for petitioner and perusing the R & P of the trial

court, this petition is decided.

5] The provisions of section 138 of the NI Act clearly contemplate and mandate issuance of demand notice so as to give an opportunity to a person who has issued the cheque in order to avoid unnecessary criminal prosecution. Here, in this case no doubt, the respondent No.2 – original complainant has issued such notice, however, it is in respect of only three cheques as can be seen from the averments in para 6 of the complaint. No notice was given in respect of Cheque bearing No.686851 dated 8th March 2001 for the sum of Rs.34,635/-. According to respondent No.2 the said details remained to be mentioned in the demand notice due to over sight while typing. Thus, it is clear that as regards the dishonour of cheque for the amount of Rs.34,635/- in respect of which also petitioner is being prosecuted, there was no demand notice and sans demand notice complaint itself is not tenable. In respect of the dishonoured two cheques as mentioned in para 6 of the complaint, the cheque No.683955 dated 11th February 2001 for Rs.49,764/- was inadvertantly mentioned as Cheque No.683995. Similarly, Cheque No.685852 for the amount of Rs.79,622/- was wrongly referred to as Cheque No.685822. Thus, in respect of these two dishonoured cheques also the details thereof were not correctly mentioned and they were corrected by the subsequent notice. In that situation, the respondent No.2 could have given some

opportunity and time to the petitioner accused to reply to the said notice or to satisfy the demand in respect of those cheques. Instead, the respondent No.2 on 18th July 2001 itself, filed criminal case before the trial court. Therefore, it goes without saying that for want of proper legal demand notice which is must under section 138 of N.I. Act the case filed before the trial court and the process issued thereon against the petitioner, are liable to be quashed and set aside.

6] Even in respect of the second ground there appears much substance as verification to the complaint filed before the trial court merely states that the complaint is filed by one Gyan Prakash Singh who is Assistant Manager of respondent No.2 and is authorised signatory of the said company. However, the resolution passed by the Board of Directors of the said company authorising him to file such criminal case is not produced on record of the trial court. As laid down by our High Court in the case of Candy Spirit Pvt. Ltd. Vs. Reeves Mia & Anr. (2012) ALL M.R. (Cri) 403, the purported representative of the company who has filed the criminal case on behalf of the company has to prove his authorisation to do so. In the absence thereof, the complaint filed cannot be said to be tenable. In the instant case, as no such authorisation or resolution passed by the Board of Directors is filed on record, on this ground also the process issued by the trial court against the petitioner is required to

be quashed and set aside.

7] As a sequel to the above observations, the petition is allowed. Process issued against the petitioner for the offences under section 138 of the Negotiable Instruments Act is quashed and set aside. Bail bonds of petitioner stands cancelled. Rule is made absolute in the above terms.

(JUDGE)