IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1928 OF 2001

Smt. Saroj Kiran Ahire ..Applicant

v/s.

Sunil Eknath Pawar & Ors. ..Respondents

Mr. Rajshekhar V. Govilkar for the Applicant
Mrs. G.P.Mulekar, APP for the Respondent-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : FEBRUARY 24, 2016.

P.C.

1. This is an application under Section 482 of Cr.P.C. filed by the aforesaid applicant challenging the order dated 28.4.2000 in Criminal Case No. 211/S/2000 whereby the learned Addl. Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai has issued process for offence under Section 138 of the Negotiable Instruments Act.

2. Mr.Govilkar, the learned counsel for the applicant submits that the complaint does not disclose the essential ingredients of the

offence under Section 138 of Negotiable Instruments Act. He has further submitted that the applicant herein is the sister of the complainant and that she had already lodged a complaint against the respondent-complainant for committing theft of the subject cheque. He has further submitted that the police report also substantiates the allegations leveled against the applicant. The learned counsel therefore contends that this is a fit case for quashing the order of issuance of process.

3. The respondent was not present despite due service.

4. I have perused the records and considered the submissions advanced by the learned counsel for the applicant.

5. At the outset, it may be mentioned that the Honourable Apex Court has considered the scope of 482 of Cr.P.C. in ***State of Haryana & Ors. V/s. Bhajanlal & Ors. 1992 SUPP (1) SCC 335*** and several other subsequent decisions. Recently in ***Rishipal Singh Vs. State of U.P. & Anr (2014) 7 SCC 215 the Apex Court*** while considering the scope and ambit of section 482 of the Cr.P.C. has held that :

> *"A bare perusal of Section 482 Cr.P.C. makes it crystal clear that the object of exercise of power under this section is to prevent abuse of process of Court and to secure ends of justice. There are no hard and fast rules that can be laid down for the exercise of the extraordinary jurisdiction, but exercising the same is an exception, but not a rule of law. It is no doubt true that there can be no straight jacket formula nor defined parameters to enable a Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The Courts have to be very circumspect while exercising jurisdiction under Section 482 Cr.P.C."*

. The Apex Court after considering the previous pronouncements has reiterated the guidelines with regard to exercise of jurisdiction by the Courts under Section 482 Cr.P.C.

> *"What emerges from the above judgments is that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The Courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the Court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power under Section 482 Cr.P.C. While exercising the power under the provision, the Courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not,*

> *but it should not convert itself to that of a trial Court and dwell into the disputed questions of fact.”*

6. Reverting to the facts of the present case, the records reveal that the applicant herein is the sister of the respondent complainant. The respondent complainant had filed a complaint under Section 138 of the Negotiable Instruments Act alleging that there was a dispute between him and his family members on one side and the applicant accused on the other side. He has stated that by way of settlement, the applicant had agreed to pay Rs.40 lakhs to her parental family. He has stated that accordingly the applicant accused had issued cheque no. 378225 dated 15.12.1999 for an amount of Rs.40 lakhs in his favour. The complainant had stated that he had presented the said cheque in the State Bank of India, Bandra (East) branch, and that the said cheque was returned unpaid on 15.12.1999 with an endorsement “not arranged for”. By notice dated 23.12.1999 he called upon the applicant to make the payment. The said notice was returned with postal endorsement “not claimed”. The respondent-complainant claimed that the applicant had intentionally avoided to

receive the said notice. Since the applicant accused did not make the payment, the complaint was filed on 5.2.2000.

7. The averments in the complaint prima facie indicate that the applicant was the drawer of the cheque. It may be mentioned that the Apex Court in ***Kusum Ingots and Alloys Ltd. Vs. Pennar Peterson Securities Ltd., & Ors. 2002 SCC 745*** while considering the scope and object of Section 132 of the N.I.Act has held as under:_

> *10. On a reading of the provisions of* Section 138 *NI Act it is clear that the ingredients which are to be satisfied for making out a case under the provision are :*
>
> *(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;*
>
> *(ii) that 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;*
>
> *(iii) that cheque is returned by the bank unpaid. either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;*

(iv) the payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice;

If the aforementioned ingredients are satisfied then the person who has drawn the cheque shall be deemed to have committed an offence. In the explanation to the section clarification is made that the phrase "debt or other liability" means a legally enforceable debt or other liability."

8. In the instance case, the complaint prima facie indicates that the applicant accused had issued the subject cheque on an account maintained by her towards payment of the money agreed in the family settlement. Even otherwise the terms of section 139 the presumption is that the cheque was issued towards discharge of legally enforceable debt. The said cheque was presented in the bank within the stipulated time and was dishonoured, pursuant to which

the respondent complainant had issued a statutory notice. The fact that the said statutory notice was returned unclaimed is not of relevance at this stage as in view of Section 27 of the General Clauses Act, such notice is deemed to be served. Needless to state that the said presumption is rebuttable and can always be rebutted in the course of trial. The complaint discloses essential ingredients of the offence. The defence of the applicant that the said cheque was stolen or that there was no liability cannot be considered at this stage and will have to be considered and decided on merits in the course of trial.

9. Under the circumstances the application has no merits and is hereby dismissed.

(ANUJA PRABHUDESSAI, J.)