

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.130 OF 2015****in
C.C. NO.4457/SS OF 2014**

Columbia Petro Chem Pvt. Ltd. & Ors. Petitioners

Vs.M/s Coastline Shipping (India) Pvt. Respondents
Ltd. & Ors.Mr. Girish Kulkarni i/by Mr. M.G. Shukla, Advocate for the
Petitioners.Mr. Ganesh S. Vaidya, Advocate for respondent no.1.
P.B. Bhosale, A.P.P. for the State.**Coram : Smt. R.P. SondurBaldota, J.****Date : 25th February, 2016**

P.C.

1 The petitioners herein are accused nos. 1,2, 4 and 5 in Criminal Case no.4457/SS/2014 for the offence punishable under Section 138 Negotiable Instruments Act filed by respondent no.1. By the order dtd. 7th November, 2014, the trial court issued process against the petitioners and original accused no.3 for the offence punishable under Section 138 read with 141 Negotiable Instruments Act.

2 Being aggrieved by the order, the petitioners had preferred Criminal Revision Application No. 1519 of 2014 to the Sessions Court, Mumbai. By the order dtd. 1st January, 2015, the Sessions Court dismissed the revision. Thereafter the petitioners have approached this court.

3 Respondent no.1 carries on shipping business and had provided barge services to petitioner no.1 for carrying cargo from the Chartered Ship/Mother vessel to the shore for which petitioner no.1 was due to pay an amount of Rs.63,03,930/- till 25th July, 2014 to respondent no.1. Petitioner no.2 is the Director of the Company, petitioner no.3 is it's Vice President and petitioner no.4 is the General Manager. Towards the liability, petitioner no.1 had issued two cheques dtd. 1st August, 2014 and 6th August, 2014 for Rs.5,00,000/- each. The cheques when presented for payment, were dishonoured with remarks "payments stopped by drawer". Respondent no.1 then sent statutory notice dtd. 27th August, 2014 calling upon all the petitioners and original accused no.3 to make the payment. In it's reply dtd. 11th September, 2014, the petitioners did not dispute the transaction between the parties and the fact of it's liability to pay the service charges to respondent no.1. At para 3(c) of the reply, it is specifically admitted that the petitioner are liable to pay a sum of Rs.44,65,338/- in respect of the services

rendered by respondent no.1. However, thereafter the petitioners have claimed that they are entitled to recover from respondent no.1 damages of Rs.1,86,35,382/- towards the short delivery/misappropriation of 225.092 M.T. oil by respondent no.1 and sought adjustment of the amount owed by them to respondent no.1 towards the damages. Further at para 3(i) of the reply, the petitioners specifically admit issuance of two cheques each in the sum of Rs.5,00,000/- and give details of the cheques stating that the amount was paid to avoid hardships, loss and damage though respondent no.1 had failed to allow the oil to be discharged and taken away by the petitioners.

4 The Revisional court has, in the above facts of the case, noted that as regards the liability of the petitioners to respondent no.1, there is no dispute. Similarly there is no dispute as regards issuance of cheques and instructions by the petitioners to the bank to stop the payment on the cheques to hold that the order of issuance of process is correct.

5 Mr. Kulkarni, the learned advocate for the petitioners submits that the courts below have failed to take into consideration the damages claimed by the petitioners against respondent no.1 and failed to give due weightage to the same. The second argument of Mr. Kulkarni is that neither in the

complaint nor in the statement of verification, respondent no.1 has specified role of petitioners no.2, 3 and 4. He relies upon decision of this court in Criminal Writ Petition No.1520 of 2014, to submit that unless there is a specific role assigned to applicants no.2 to 4, the proceedings against the petitioners cannot be sustained. In the decision cited, the question considered by this court was of validity of resignation on the part of the directors and the specific role played by the accused persons. There was also assault alleged on one of the petitioners. Mr. Vaidya, the learned advocate for respondent no.1 on the other hand relies upon two decisions of the Apex Court in K.K. Ahuja vs. V.K. Vora and Anr., reported in MANU/SC/1111/2009 (equivalent citation 2009(1) UJ 3229) and HMT Watches Limited vs. M.A. Abida and Others, reported in MANU/SC/0296/2015 (equivalent citation: 2015(3) SCALE 832) to submit that if there is sufficient material on record to enable the learned Magistrate to form a prima facie view as regards commission of offence punishable under Section 138 of Negotiable Instruments Act, any further defence taken by the accused would be a matter of establishing the same at the time of trial. The applicant cannot be permitted to use the same to challenge the order of issuance of process.

6 Mr. Kulkarni also draws attention to the complaint filed by the petitioners to the Police, on the basis of which a crime has been registered on 23rd September, 2014 for the offence punishable under Sections 407, 427 read with 34 Indian Penal Code against seven persons for pilferage of oil, in support of his contention that there would in fact be no amount payable to respondent no.1.

7 I have heard the learned advocates and perused the papers. In my considered opinion, there is no merit in the petition filed and no infirmity in the order of the learned Magistrate of issuance of process and the order of the learned Sessions Judge confirming that order. As has been observed by the two courts, the reply sent by the petitioners to the statutory notice is clear indication of existence of prima facie case, as regards the liability of the petitioners to respondent n.1 and issuance of cheques towards that liability. Any claim of petitioner no.1 for recovery of damages on account of pilferage of oil would be an entirely different cause of action, for which the petitioners may resort to independent proceedings.

8 As regards assignment of role to petitioners no.2 to 4, the witness of respondent no.1 has, at para 2 of his verification, clearly assigned the roles to them, which in my

opinion is sufficient evidence. Thus, there is no merit in challenge to the order of issuance of process. Hence, the writ petition is dismissed.

(Smt. R.P. SondurBaldota, J.)