

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.160 OF 2008**

...

Shri Pankaj Vijayan  
 Adult, Occupation: Advocate,  
 Having his office at-M/s.Intralegal,  
 33, Kamar Building, 5<sup>th</sup> floor,  
 38 Kavasji Patel Street, Fort,  
 Mumbai-400 001

...Applicant

v/s.

1.The State of Maharashtra  
 (At the instance of Senior Inspector of Police  
 M.R.A. Marg Police Station, Mumbai)

2. Mrs.Dipshikha Srivastava  
 Adult, Occ:Principal,  
 Raj Hans Vidyalaya,  
 R/o.701-C, 7<sup>th</sup> Floor, Oberoi Sky Heights,  
 Lokhandwala Complex, Andheri (West),  
 Mumbai- 400 053

...Respondents

...

Mr.Sanjeev P. Kadam for the Applicant.  
 Mrs.M.H.Mhatre, APP for Respondent No.1.

...

**CORAM : A.S.OKA &**  
**A.A. SAYED, JJ.**

**DATED : 9 JUNE 2016**

**ORAL JUDGMENT:** (Per A.S.Oka, J.)

Heard the learned Counsel appearing for the Applicant and the learned APP for the State. The prayer in this Application under Section 482 of the Code of Criminal Procedure, 1973 is for quashing the First

Information Report registered on the basis of the order dated 30 October 2007 passed by the learned Additional Chief Metropolitan Magistrate, 38<sup>th</sup> Court, Ballard Pier, Mumbai under sub-section 3 of Section 156 of the Code of Criminal Procedure, 1973.

2. It will be necessary to set out the facts of the case. The Applicant who is a Member of the Bar acting on behalf of M/s.Intra Legal, Advocates & Consultants issued a notice dated 14 August 2007 on behalf his client Smt.Rukmani Sharma to the second Respondent. The notice was issued on the basis of dishonour of a cheque drawn by the second Respondent in favour of the Applicant's client. The notice was issued under Section 138 of the Negotiable Instruments Act, 1881. The notice was replied by the second Respondent through her advocate. Thereafter, the Applicant as per the instructions of the said Smt.Rukmani Sharma filed a complaint under Section 138 of the Negotiable Instruments Act,1881 in the Court of the learned Metropolitan Magistrate.

3. The said complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed on 28 September 2008. It appears that, on 16 October 2007, the second Respondent filed a complaint before the learned Addl.Chief Metropolitan Magistrate, 38<sup>th</sup> Court, Ballard Pier,

Mumbai alleging commission of offences under Section 467, 468 and 471 read with Section 114 of the Indian Penal Code. As stated, the learned Metropolitan Magistrate passed an order dated 30 October 2007 under sub-section 3 of Section 156 of the Code of Criminal Procedure (for short “the said Code”). It is on the basis of this order that the impugned First Information Report was registered.

4. The submission of the learned Counsel appearing for the Applicant is that filing of such complaint and seeking action under sub-section 3 of Section 156 of the said Code against the Applicant is nothing but gross abuse of the process of law in as much as the Applicant was acting as an Advocate for his client Smt.Rukmani Sharma. He has taken us through the averments made in the complaint. He submitted that by no stretch of imagination, any offence was made out as against the Applicant.

5. We have heard the learned APP, who supported the order of the learned Addl. Chief Metropolitan Magistrate. None appears for the second Respondent.

6. We have considered the submissions. Admittedly, the Applicant was engaged as an advocate by the said Smt.Rukmani Sharma on whose instructions, on 14 August 2007, the Applicant issued a notice to the second Respondent under Section 138 of the Negotiable Instruments Act, 1881. In the said notice, all the particulars of the dishonoured cheque allegedly issued by the second Respondent have been mentioned. The said notice was replied by the advocate for the second Respondent. Thereafter, acting upon the instructions of his client, the Applicant filed a private complaint under Section 138 of the Negotiable Instruments Act, 1881.

7. We have perused the averments made in the Application made by the second Respondent under sub-section 3 of Section 156 of the said Code. The first allegation against the Applicant is that in the legal notice, he did not disclose the address of his client. The allegation is that this was done by the Applicant with dishonest intention of hiding his client from the consequences of her criminal act. It will be necessary to make a reference to the order dated 30 October 2007 passed by the learned Addl.Chief Metropolitan Magistrate. The paragraph 2 of the said order read thus:-

"2.Accused No.2 is an advocate by profession. On perusal of the Notice issued by accused No.2, which is at Exh.8, it is crystal clear, that metriculously the accused have concealed the name of

the accused No.1 and the bank, where the cheque was presented is also concealed. Subsequently, the complainant replied to the notice and the reply is at Exh.`B'. In the Reply, the complainant sought more information regarding the name of the bank, where the cheque was presented. In spite of receiving the notice no reply came to be forwarded by accused No.2. Such conduct on the part of an Advocate requires to be condemned. On perusal of the complain, it appears that, there is deliberate mischief and falsification of the documents, which are referred to in the notice. Accused No.2 has also not disclosed the full address of accused No.1. Non-disclosure of the address of accused No.1 has mentally disturbed the complainant, as there is apprehension that fraud is played upon the complainant.”

8. We are shocked to note the approach of the learned Additional Chief Metropolitan Magistrate. While issuing the legal notice, the Applicant was under no obligation to disclose the address of his client. The name of his client was clearly mentioned. The address of his client was disclosed on a complaint filed under Section 138 of the Negotiable Instruments Act, 1881. To say the least, the finding recorded by the learned Magistrate as against the Applicant appears to be completely perverse. In fact, taking the averments made in the complaint filed by the second Respondent as correct, absolutely no offence was disclosed against the Applicant. Hence, the Application must succeed and we pass the following order.

ORDER

(i) Rule is made absolute in terms of prayer clauses (b) and (c) which read thus ;

“b. That by an Order issued by this Hon'ble Court the complaint registered by M.R.A. Marg Police Station, Mumbai vide M.E.C.R. No.20 of 2007 may kindly be quashed qua the present Petitioner;

c. That the complaint and the Order passed by Ld. Addl. Chief Metropolitan Magistrate, 38<sup>th</sup> Court, Ballard Pier, Mumbai in C.C. No.91/Misc./2007, Dt.30/10/2007, may kindly be declared illegal and the same may be quashed and set aside;”

(ii) We , however, make it clear that the relief granted is confined only to the present Applicant and no adjudication is made as regards the merits of the case against the other accused;

**(A.A. SAYED, J.)**

**(A.S.OKA, J.)**