

Anand

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

**CRIMINAL APPLICATION NO.631 OF 2015  
WITH  
CRIMINAL APPLICATION NO.632 OF 2015  
WITH  
CRIMINAL APPLICATION NO.633 OF 2015  
WITH  
CRIMINAL APPLICATION NO.634 OF 2015  
WITH  
CRIMINAL APPLICATION NO.635 OF 2015  
WITH  
CRIMINAL APPLICATION NO.636 OF 2015  
WITH  
CRIMINAL APPLICATION NO.637 OF 2015  
WITH  
CRIMINAL APPLICATION NO.638 OF 2015  
WITH  
CRIMINAL APPLICATION NO.639 OF 2015**

Mrs.Meena Ajit Shah

.Applicant  
(Original  
Accused No.3)

Vs.

Dilip Nagpal & ors.

.Respondents

Mr.H.Desai, Advocate, for the Applicant in all matters

Mr.M.G.Shukla, Advocate, for the Respondent Nos.1 to 6 in all matters

Ms Pallavi Dabholkar, APP, for the Respondent No.7 – State in all matters

**CORAM : REVATI MOHITE DERE, J.**

**DATE : 14.10.2016**

**P.C.**

. Heard learned counsel for the parties.

2. By these Applications, the Applicant has impugned the order issuing process dated 25.09.2013 passed by the learned Metropolitan Magistrate, 20<sup>th</sup> Court, Sewree, Mumbai, as against the Applicant and others, as well as the order dated 24.02.2015 passed by the learned Additional Sessions Judge, City Civil & Sessions Court, Mumbai, dismissing the Revision Applications preferred by the Applicant, against the order of issue process.

3. The principal submissions of the learned counsel for the Applicant are; (i) that the Respondent No.1 (Original Complainant) has made a false and incorrect statement in the complaint, 'that no reply was given' by the Applicant, to the statutory notice sent by the Respondent No.1 and hence, the learned

Magistrate was deprived of an opportunity of considering the Applicant's reply before issuing process and (ii) that there is no specific allegation or role ascribed to the Applicant, so as to attract the provisions of Section 138 r/w. 141 of the Negotiable Instruments Act. Learned counsel relied on several Judgments of the Apex Court as well as of this Court in support of his submissions :- (i) **Subramaniam Sethuraman v. State of Maharashtra & Anr.**, reported in 2004 Vol.106(4) Bom. L. R. 775(SC); (ii) **Pooja Ravinder Devidasani v. State of Maharashtra & Anr.**, reported in AIR 2015 SUPREME COURT 675; (iii) **V.K.Jain And Ors. v. Pratap V. Padode And Anr.**, reported in 2005(3) Mh.L.J.778; (iv) **Sushanta J. Sarkar & Ors. v. State of Maharashtra & Ors.** dated 19.09.2013 in Cri.W.P.No.1861 of 2013; (v) **Meena Ajit Shah v. Yogesh D. Agarwal & Ors.** dated 09.09.2014 in Cri.Appln.No.562 of 2014; (vi) **Shantanu Narayan**

***Rooj & Anr. v. State of Maharashtra & Anr. dated 09.04.2015 in Cri.W.P.No.1520 of 2014; (vii) Ramesh Dhudku Patil & Others v. State of Maharashtra, reported in CDJ 2013 BHC 2367.***

4. Learned counsel for the Respondent No.1 – (Original Complainant) opposed the Applications. He submitted that the Applicant is the Joint Managing Director of 'M/s. Shruti Arts Pvt. Ltd.'. He submitted that there are sufficient averments in the complaint, so as to attract the provisions of Section 138 r/w.141 of the Negotiable Instruments Act. According to the learned counsel for the Respondents, the Applicant, as the Joint Managing Director of the said Company had signed bills of exchange, pursuant to which cheques were issued. He further submitted that in all the cases, affidavit of evidence was filed, sometime in January, 2014 and the said fact has been suppressed by the Applicant in the aforesaid

Applications, pursuant to which interim orders were passed. He submitted that the aforesaid Applications were filed in July, 2015 and that a perusal of the said Applications show, that the Applicant had deliberately suppressed the said fact i.e. that affidavit of evidence was filed in all the cases. He submitted that plea has been recorded and affidavit of evidence has also been tendered in January, 2014 in all the cases and the matter is posted for cross-examination of the Respondent No.1 (Original Complainant). Learned counsel for the Respondent No.1 (Original Complainant) relied on the Judgment of the Apex Court in the case of ***Subramaniam Sethuraman v. State of Maharashtra & Anr.***, reported in ***2004 Vol.106(4) Bom. L. R. 775(SC)***, to show that once plea is recorded, no interference was warranted.

5. Perused the papers. The first submission of the learned counsel for the

Applicant is, that the Respondent No.1 had in the complaints, suppressed the reply given by the Applicant to the statutory notice sent by the Respondent No.1. According to him, despite Respondent No.1's (Original Complainant's) Advocate having received the reply on 21.08.2013, the said reply was not disclosed in the complaints. He submitted that the Respondent No.1 instead in his complaint in Para 7 (last line) has stated as under :-

"The Accused have not even replied to the said notice".

He submitted that in the reply, the Applicant had specifically stated that she was not concerned in any manner, whatsoever, with the alleged loan transactions; that she had not signed any document; that she had not taken any part in the alleged transactions on behalf of the Company 'M/s. Shruti Arts Pvt. Ltd.'; that she was not holding the position in the Company as was alleged by the Complainant (Respondent

No.1) and that she was not looking after the day to day affairs of the Company. According to the learned counsel, if the said reply was annexed to the complaint, the learned Magistrate may not have issued process against the Applicant.

6. According to the learned counsel for the Respondent No.1, even if the said reply was considered, the said reply was time barred inasmuch as, it was received beyond the stipulated period of 15 days.

7. It appears that although a reply was given to the statutory notice and was received by the Respondent No.1's Advocate on 21.08.2013, the same was not annexed to the complaint and was also not disclosed in the complaint. A perusal of the said reply shows that the Applicant has denied that she was and is the Joint Managing Director of the 'M/s. Shruti Arts Pvt. Ltd.' According to the Applicant, she is

the Director of the said Company but she was not concerned in anyway with the alleged loan transactions nor was she attending to the day to day affairs of the Company. The Respondent No.1 (Original Complainant) has specifically alleged that the Applicant is the Joint Managing Director of 'M/s. Shruti Arts Pvt. Ltd.' and has averred the said fact, specifically in para 2 of the complaint. Whether or not the Applicant was only a Director and not concerned with the day to day affairs of the Company, is a matter which will be decided by the trial Court.

8. The second submission of the learned counsel for the Applicant is, that there is no specific allegation or role ascribed to the Applicant as is required under Section 138 r/w.141 of the Negotiable Instruments Act.

9. Perused the complaint. Paras 2, 3 & 4 of the complaint read as under :-

"2. I say that Accused No.1 is a Limited Company, duly incorporated under the provisions of Companies Act, 1956. Accused No.2 is the Chairman and Managing Director, Accused No.3 is the Joint Managing Director, Accused No.4 is the Finance Manager, Accused No.5 is the Finance Controller and Accused No.6 is the Manager of Accused No.1. All Accused Nos.2 to 6 are in-charge and responsible for the day to day conduct and affair of Accused No.1 Company at all relevant time.

3. Accused Nos.2 to 6 being responsible for the day-to-day affairs and in-charge of the Accused No.1 Company had approached the Complainant and sought financial assistance. Upon such representation made by Accused Nos.2 to 6, the Complainant had advanced loan to the tune of Rs.1,00,000/- and for which Accused have executed Bill of Exchange to that effect. The loan transaction initially was for limited period and for the same, the bill of exchange was executed thereafter, at the request of the Accused, the loan period was renewed from time to time by executing fresh bill of exchange. Accused Nos.2 to 6 were present at the time of meetings and discussions for

the purpose of renewal of the said loan and in presence of Accused Nos.2 to 6 necessary documents have been executed. Accused Nos.2 to 6 have further assured the Complainant that the said amount will be repaid including that of the interest thereon by Accused, on such assurances and promises being given by the Accused to the Complainant, the Complainant advanced the Accused the said loan and the same was accepted and acknowledged by Accused Nos.2 to 6 in Company's Account and thereby Accused Nos.2 to 6 became liable to make the said payment for and on behalf of Accused No.1. The Complainant craves leave to refer to and rely upon the Bill of Exchange, when produced.

**4. Accused Nos.2 and 3 have signed the Bill of Exchange for and on behalf of Accused No.1 and also accepted the Bill of Exchange in their personal capacity and thereby also assured to repay the said loan amount.** The Accused Nos.4 to 6 being the Finance Manager, Finance Controller and Manager were present at the time of transaction and Accused Nos.4 to 6 had represented about the financial status of the Accused No.1 and he also assured the repayment of the amount as they had good financial prospectors

of Accused No.1. Thereby all Accused Nos.2 to 6 in their capacity of as responsible and in-charge of day to day affairs of Company had participated in the transaction and are liable for payment. The Bill-of-Exchange was executed from time to time and the term loan was extended."

*Emphasis supplied*

10. It is specifically averred by the Respondent No.1 (Original Complainant) that the Applicant is the Joint Managing Director of 'M/s. Shruti Arts Pvt. Ltd.' It is also specifically stated that the Applicant alongwith Accused No.2 had signed the bills of exchange for and on behalf of the Accused No.1 – Company and had also accepted the bill of exchange in their personal capacity and as such, assured to repay the said loan amount. It is specifically averred that the Applicant was responsible and in-charge of the day to day affairs of the Company in her capacity as the Joint Managing Director and had participated in the transaction

and as such was liable for the payment. Reliance placed on the Judgment of the Apex Court in the case of ***Pooja Ravinder Devidasani v. State of Maharashtra & Anr.***, reported in ***AIR 2015 SUPREME COURT 675*** is misplaced in the facts of the present case. The averments in the complaint as reproduced hereinabove reveal the role of the Applicant. The averments as stated aforesaid are sufficient to attract the provisions of Section 138 r/w.141 of the Negotiable Instruments Act.

11. A perusal of the complaint as a whole, clearly shows that the requisite averments, as required to attract the provisions of Section 138 r/w. 141 are disclosed. Considering the assertions made in the complaint and keeping in mind the averments, in the complaints against the Applicant, no interference is warranted in the impugned orders issuing process and the orders passed by the learned Sessions Judge dismissing the Cri. Revn. Applications.

12. Even otherwise, plea has been recorded on 04.12.2013 and Affidavit of evidence has been tendered in all the cases in January, 2014 and the matter is being adjourned from time to time for cross-examination of the Respondent No.1 (Original Complainant).

13. Accordingly, the Applications stand rejected.

14. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

All contentions of both the parties are kept open.

Parties to act on the authenticated copy of this order.

**(REVATI MOHITE DERE, J.)**