

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2854 OF 2014

National Paper Box Manufacturing Co.,
Goregaon, Mumbai

.... Petitioner

Versus

Maharashtra Small Scale and Development
Corporation Ltd., Thane & Anr.

.... Respondents

Mr. N.K. Thakore, i/by Mr. Ganesh Bhujbal, for
the Petitioner.

Mr. Vaibhav Gaikwad, for Respondent No.1.

Mrs. M.R. Tidke, A.P.P., for Respondent No.2-
State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 26TH FEBRUARY 2016.

P.C. :

1. By this Petition, the Petitioner-Original Accused in C.C. No.3059 of 2001 has challenged the order passed by the Additional Sessions Judge, Thane, in Criminal Revision Application No.55 of 2009, thereby dismissing the revision and confirming the order passed by the Court of Judicial Magistrate, First Class, Thane, rejecting the Petitioner's application for issue of search warrant under Section 93 of Cr.P.C. for production of certain documents.

2. The submission of learned counsel for the Petitioner is that the instant Criminal Case is filed against the Petitioner for the offence under Section 138 of the Negotiable Instruments Act. As per Section 139 of the Negotiable Instruments Act, there is presumption that cheque was issued for lawful consideration. The burden to rebut the said presumption lies on the Petitioner-Accused and for that purpose, the documents, as mentioned in his application, are necessary to be produced. However, the Trial Court and the Revisional Court has rejected his application mainly on the ground that, if the documents are not produced, the adverse inference can be drawn. According to learned counsel for the Petitioner, mere drawing of adverse inference will not help the Petitioner, as, by that way, he will not be able to rebut the presumption under Section 139 of Negotiable Instruments Act. Hence, according to him, the impugned order passed by the Trial Court and confirmed by the Revisional Court suffers from illegality and hence liable to be set aside.

3. However, perusal of the impugned order of the Trial Court and of the Revisional Court reveals that earlier also the Petitioner has filed application at Exhibit-44 for production of these documents. The said application was filed under Section 91 of Cr.P.C. and it was rejected on 4th

July 2007. That order is not challenged and, therefore, it has become final. In such situation, the application under Section 93 of Cr.P.C. cannot become tenable at all, because Section 93 of Cr.P.C. provides that, only when the Court has reason to believe that a person, to whom a summons or order under Section 91 of Cr.P.C. or requisition under sub-section (1) of Section 92 of Cr.P.C. has been addressed, will not or would not produce the documents or things, as required by such summons or requisition, the Court may issue such general search warrant.

4. In the instant case, when already the Petitioner's application preferred under Section 91 of Cr.P.C. is dismissed and that order has obtained finality, no question arises of issuing the search warrant for production of those documents under Section 93 of Cr.P.C. The essential condition for issuance of warrant under Section 93 of Cr.P.C. is that, the Court should have reason to believe that the person to whom a summons or order is issued under Section 91 of Cr.P.C. will not produce the documents.

5. Here in the case, no order to that effect is passed under Section 91 of Cr.P.C. Therefore, the Trial Court and the Revisional Court have rightly rejected the Petitioner's application filed under Section 93 of Cr.P.C. No

illegality can be found in the impugned order passed by the Trial Court and Revisional Court. Therefore, the Writ Petition stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]