Dixit

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2881 OF 2014

Alamelu Padmavathy Proprietor of Endocare Diagnostic Centre, Chennai	….	Petitioner / (Org. Accused)
Versus		
Siemens Ltd., Worli, Mumbai & Anr.	….	Respondents

Mr. Firoz Ahmed and Mr. Ashok Rao for the Petitioner.

Mr. Prasad Borkar for Respondent No.1.

Mrs. A.S. Pai, A.P.P., for Respondent No.2-State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 26TH FEBRUARY 2016.

P.C. :

1. This Writ Petition is preferred by the Original Accused challenging the process issued against her for the offence punishable under Section 138 of Negotiable Instruments Act, by the Court of Metropolitan Magistrate, 7th Court, Dadar, Mumbai in C.C. No.303/SS/2014. The main grievance raised by the learned counsel for the Petitioner is that the Petitioner has not issued the cheque in dispute to Respondent No.1, nor the same has been issued by M/s. Endocare Diagnostic Centre, Chennai, of which Petitioner is the Proprietor. It is urged that the present Petition is

not, in any way, concerned with the cheque and the said fact is very well made clear in the reply to the notice sent by the Petitioner to Respondent No.1. Despite that, the complaint has been filed against the Petitioner by Respondent No.1 and in view thereof, the process issued against her is required to be quashed and set aside.

2. To substantiate his submission, learned counsel for the Petitioner has relied upon the essential ingredients of Section 138 of the Negotiable Instruments Act, which are laid down by the Apex Court in the case of ***Jugesh Sehgal Vs. Shamsher Singh Gogi, (2009) 14 SCC 683***. The first and foremost essential ingredient, as laid down in this authority, is that, *"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"*. It is urged that, this essential ingredient of Section 138 of Negotiable Instruments Act is not at all satisfied in the instant case, as the cheque in dispute is neither issued from the account of M/s. Endocare Diagnostic Centre, Chennai, of which the Petitioner is a Proprietor or from the account of the Petitioner herself and in such situation, when only a drawer of the cheque can be liable for prosecution, the Petitioner, who is not a drawer of the cheque, can in no way be fasten with the penal liability.

3. The learned counsel for the Petitioner has further relied upon the authority of ***Mrs. Aparna A. Shah Vs. M/s. Sheth Developers Pvt. Ltd. & Anr., (2013) 8 SCC 71***, which also confirmed the position that only the drawer of the cheque can be prosecuted under Section 138 of Negotiable Instruments Act.

4. Learned counsel for Respondent No.1 has controverted all these contentions of the Petitioner by submitting that there are and were the business relations between the Petitioner and Respondent No.1. The Petitioner is running a Proprietary Concern under the name and style of M/s. Endocare Diagnostic Centre and Respondent No.1 was supplying the reagents to the Petitioner. As some of the reagents supplied were not of satisfactory quality and requirement, the Petitioner herein has instructed Respondent No.1 to take back the said instruments after refund of the deposit amount of Rs.3,00,000/- made by the Petitioner herein at the time of installation of the said instrument. As per Respondent No.1, cheques of the amount of Rs.4 lacs and 5 lacs respectively, were issued, which were not honoured by the Bank.

5. Thus, the averments in the complaint are, at this stage, more than

sufficient to reflect that the Petitioner and Respondent No.1 were not the total strangers as such, but they had the business relations. In para No.13 of the affidavit-in-reply filed by Respondent No.1, it is specifically stated that, till date, Respondent No.1 has supplied the reagents worth approximately Rs.90 lacs from the date of installation and the Petitioner has made payment by Demand Drafts. Even the Petitioner has issued above two dishonoured cheques from the same Bank Account, however, now the Petitioner is taking a false defence.

6. Thus, it can be made crystal clear that whether the cheques were issued by the Petitioner from her account or whether she has not issued those cheques at all is a disputed question of fact, which can be decided only after the evidence is led by the parties. In writ jurisdiction, this Court cannot enter into such disputed question of fact. Prima facie, the averments made in the complaint are sufficient to infer that, in view of the business transactions between the Petitioner and Respondent No.1, the disputed cheques were issued by the Petitioner. As to the extent of her liability or as to the fact whether the said Bank Account is of her Proprietary Concern or her own personal account, all these facts can be decided, if the trial of the case proceeds. But, at this stage, it has to be stated that no sufficient grounds are made out to quash the process

issued against the Petitioner, as, prima facie, there does not appear to be any illegality, impropriety, much less, perversity in the order of issue process passed by the Trial Court.

7. The second contention raised by learned counsel for the Petitioner, at the stage of argument, is that the demand notice is not issued within a period of one month, as required under the Negotiable Instruments Act. It is urged that the intimation from the Bank about dishonour of the cheques was received on 2nd November 2013, whereas the notice is issued on 1st December 2013 and, therefore, it is one day late. However, the law is well settled that the period of limitation will start running on the next day from the receipt of the intimation from the Bank and, therefore, at this stage, I do not find any substance in this contention also.

8. As a result, the Writ Petition holds no merit and hence stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]