

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.910 OF 2016**

Chinubhai Ramanlal Shah

... Applicant

Vs.

L & Infrastructure Fianance & Ors.

... Respondents

Mr.Niranjan Mundargi with Vikram Sutaria i/b O.P. Mulekar for the  
Applicant

Mr.S.R. Agarkar, APP, for Respondent – State

Mr.Charles D'souza with Manaswi Agrawal for Resp. No.2

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **DECEMBER 2, 2016**

**P.C.:**

1. This application is directed against the order dated 1.10.2013 in Complaint No.2474/SS/013 of issuance of process under section 138 of Negotiable Instruments Act against the present applicant/accused i.e., the original accused No.7. The complainant company has filed complaint under section 138 and 141 r/w section 142 of the Negotiable Instruments Act against the original accused No.1 company and its Managing Director and Directors as six cheques of total amount of Rs.1,87,93,823/- which were issued during the period from 1.4.2013 to 1.6.2013 were dishonoured. The trial Court after hearing the complainant issued process under section 138 of the Negotiable Instruments Act. Hence, this application.

2. The learned Counsel for the applicant/accused has stated that the present applicant is not a full fledged Director but was only an additional Director. He has an academic background and he worked with the company till 25.1.2013. He has no authority to sign the cheques till he was working as an additional Director. The learned Counsel submitted that he resigned from the Company on 25.1.2013 i.e., much prior to the dates of issuance of the cheques which were dishonoured. In support of his submissions, he relied on Form 32 under the Companies Act, where his date of resignation is mentioned as 25.1.2013. He also mentioned that Form 32, where the date of resignation was mentioned, was presented before the Registrar of Companies on 10.4.2013 online. The learned Counsel submitted that this applicant was not concerned with any financial matter of the accused company. Hence, he prayed that the process issued against him be quashed and set aside.

3. The learned Counsel for the original complainant has submitted that the present applicant had knowledge and concurrence with the financial activities of the accused company. All six cheques were dishonoured. He submitted that Form 32 in respect of his resignation was produced on 10.4.2013. The date of issuance of the first two cheques was 1.4.2013.

4. Perused the original complaint; the documents i.e., Form 32 wherein the status of the applicant was shown in the category of additional Director and thereafter the other Form 32 wherein the date of resignation was mentioned as 25.1.2013 and that the applicant was not an additional Director of the company from that date. The two cheques were issued after his resignation and the information of the resignation was communicated to the Registrar of Companies on 10.4.2013. Considering the factual position of the applicant and also considering the facts in respect of the present accused, the order of issuance of process is set aside *qua* the applicant only.

5. Thus, the application is allowed in terms of prayer clause (a).

**(MRS.MRIDULA BHATKAR, J.)**