

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4884 OF 2004

Jacob now known as Prajakata

Albuquerque

...

Applicant

Vs.

M/s. Centaur Hotel Juhu Beach & Anr.

...

Respondents

Mr. Ashish Sawant, Adv. i/b. Mr. M.S. Mohite, Adv. for the applicant.

Mrs. Veera Shinde, APP for the State.

**CORAM : SMT ANUJA PRABHUDESSAI, J.**

**DATE : 23<sup>rd</sup> February, 2016.**

**P.C. :**

1. This is an application under Section 482 of the Cr. P.C. seeking to challenge impugned order dated 5<sup>th</sup> October, 2001 passed by the learned Addl. C.M.M., 21<sup>st</sup> Court, Bandra, Mumbai issuing process against the present applicant No.1 for the offence punishable under Section 138 of Negotiable Instrument Act, 1881.

The brief facts necessary to decide this application are as under :

2. The respondent No.1, complainant had lodged a complaint against the applicant and her husband for offence punishable under Section 138 of N.I. Act, 1881. The case of the respondent No.1-complainant in brief is that the applicant and her husband had

occupied one of the rooms of complainant hotel. The husband of the applicant had issued a cheque No.257288 dated 9<sup>th</sup> July, 2001 for Rs.13 lacs towards part payment of the bill. The said cheque was deposited in the bank and was returned unpaid with endorsement "funds insufficient". The respondent No.1 - complainant issued demand notice and called upon the applicant and her husband to pay the cheque amount within 15 days from the receipt of the notice. Having failed to pay the cheque amount, the respondent No.1 - complainant filed a complaint under Section 138 of the N.I. Act against the applicant as well as her husband.

3. By impugned order dated 5<sup>th</sup> October, 2001, the learned Magistrate issued process against both the accused for the offence punishable under Section 138 of N.I. Act. Being aggrieved by the said order, the applicant has invoked the jurisdiction of this Court under Section 482 of Cr.P.C.

4. Mr. Mohite, the learned counsel for the applicant has submitted that the applicant herein is not a signatory to the cheque and hence she cannot be prosecuted for the offence under Section 138 of the N.I. Act.

5. None present for the respondent though duly served. I have perused the records and considered the submissions advanced by the learned counsel for the applicant and the learned APP for the State. It may be mentioned that in *Aparna Shah Vs. Sheth Developers Pvt. Ltd. & Anr. (2013) 8 Supreme Court Cases 71*, the Apex Court has held that under Section 138 of the N.I.Act, it is only the drawer of the cheque who can be prosecuted. The Apex Court has further held that under Section 138 of the Negotiable Instruments Act, in case of issuance of cheque of joint accounts, the joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder. The Apex Court has further held that the culpability attached to dishonour of a cheque can, in any case “except in case of Section 141 of the N.I.Act” be extended to those on whose behalf the cheque is issued. The Apex Court has reiterated that it is only the drawer of the cheque who can be made an accused in any proceeding under Section 138 of the N.I.Act.

6. In the instant case the averments in the complaint clearly indicate that the cheque was issued by the husband of the applicant. The applicant was not a signatory to the said cheque. Hence in the

light of the principles laid down in the case of *Aparna (Supra)* the applicant cannot be prosecuted under Section 138 of N.I. Act, 1881.

7. Hence the application is allowed. The impugned order dated 5<sup>th</sup> October, 2001 is quashed and set aside, qua the applicant.

( ANUJA PRABHUDESSAI, J. )