

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2773 OF 2016

Virendra Babubhai Dalal & Ors. ... Petitioners
Vs.
The State of Maharashtra & Anr. ... Respondents

Mr. A.H. Nagi a/w. Mr. Chetan Shah, Advocate for the Petitioners.
Mr. Sagar R. Agarkar, APP for Respondent no. 1/State.
Mr. Sahil Saiyed a/w. Mr. Nikhil Apte i/b. Wadia Ghandy & Co., Advocate
for respondent no. 2

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **1st December, 2016**

P.C.:

Rule. By consent, rule is made returnable forthwith.

2. This Writ Petition is filed challenging the order dated 6th October, 2015 passed by the Metropolitan Magistrate, 30th Court, Kurla, Mumbai in C.C. No. 1267/SS/2015 and the order dated 4th November, 2015 passed by the Metropolitan Magistrate, 59th Court, Kurla, Mumbai in C.C. No. 5901008/SS/2015. By these orders, the learned Metropolitan Magistrates have issued the process for the offences punishable under section 138 r/w. 141 of Negotiable Instrument Act against the petitioners.

3. The learned counsel for the petitioners has submitted that all these petitioners are independent directors of original accused no. 1- Maharashtra Polybutenes Ltd. and original accused no. 2 Brijmohan Rathi,

who is the Managing Director of the said company, has signed 8 cheques amounting to Rs. 40,00,000/-, which were bounced. The learned counsel relied on Form No. 32 which is under the Companies Act, 1956 and submitted that the status of the directors is falling under the category of “independent”, thus they have nothing to do with the day-to-day business of the company and they were not aware when the cheques were issued. So also in the complaint, no particulars are given. Without considering this aspect, as no offence is made out against the accused persons, the learned Magistrate has issued process, which is to be quashed and set aside.

4. The learned counsel for respondent no. 2 submitted that in the complaints, the complainant company has made out a case. He relied on the relevant paragraphs of the complaints. He submitted that the cheques were paid against the transportation services rendered by the complainant and they were bounced. These petitioners are the authorized signatories. In support of his submissions, he relied on the extract of the master data of company, which is available in the website of Ministry of Corporate Affairs, wherein the names of these petitioners are mentioned as authorized signatories and directors. He further argued that the exact role of independent directors in the present transaction is a matter of evidence, however, in both the complaints there are averments against the present

petitioners about their role played in the entire transaction. In support of his submissions, he relied on the judgment of Hon'ble Supreme Court in the case of **Gunmala Sales Private Ltd. vs. Anu Mehta & Ors., and connecting Appeals, reported in (2015) 1 SCC 103.**

5. Perused the impugned orders, both the complaints and the documents presented by the learned counsel for the petitioners. Nobody is disputing that the petitioners are the directors and original accused no. 2, who has signed the cheques, is the Managing Director. 8 cheques paid against the transportation services given by the complainant company were bounced. After going through the contents in the original complaints, it is found that the complainant has mentioned that the petitioners had knowledge and concurrence. They were aware of the services given by the complainant and the monetary transaction between the complainant and their company. Prima facie it appears that there was knowledge and concurrence as it is contended. In the copies of Form No. 32, which are produced by the petitioners, the petitioners are shown in the category of independent directors. However, what are the implications of the status undoubtedly is a matter of evidence as it is related to the factual position of the business of the company. The extract of master data of the company produced herewith and which is available in the website of Ministry of Corporate Affairs discloses that below the signatory details, the

names of all the directors are mentioned.

6. Perused the judgment of Hon'ble Supreme Court in **Gunmala Sales Private Ltd.** (*supra*). I rely on paragraph 34.3 wherein the Supreme Court held as follows:

“It bears repetition to state that to establish such case unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed.”

7. Thus, I am of the view that at this stage, there is no such unimpeachable or incontrovertible evidence which is beyond suspicion before the Magistrate or before this Court. Hence, I do not find any illegality on issuance of process passed by the learned Magistrate. Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)