

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2776 OF 2016

Rajendra Mankumar Agarwal ... Petitioner
Vs.
Anil Paranlal Bajoria & Anr. ... Respondents

Mr. Ninad Mazumdar with Mr. Manish Doshi, Advocate for the petitioner.
Mr. S.R. Agarkar, APP for the respondent/State.
None present for respondent no. 1.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **16th December, 2016**

P.C.:

Rule. Rule is made returnable forthwith.

2. None present for respondent no. 1/original complainant though the notice for final hearing was served twice on him. As per the earlier notice, the petition is heard and decided finally at the stage of admission.

3. This Petition is directed against the order dated 25th July, 2016 passed by the learned Additional Sessions Judge, City Civil & Sessions Court, Greater Bombay rejecting the Application for condonation of delay in filing Revision Application and consequently dismissed the Revision. The order of issuance of process passed by learned Metropolitan Magistrate, 56th Court dated 26th February, 2014 in C.C. No. 948/SS/2014 (renumbered as C.C. No. 1773/SS/2015) is also challenged. The process

was issued under section 138 r/w. 141 of Negotiable Instruments Act against the present petitioner along with other three persons. Being aggrieved by the said order of issuance of process, Revision Application was preferred along with Application for condonation of delay of 777 days. The ground for delay contended was the acceptance of liability by the original accused nos. 1, 3 and 4, as the present petitioner who is shown as accused no. 2 was independent non-executive Director. The accused company has given the reply to the advocate of the complainant to his demand notice wherein the company has expressed total disassociation in financial matters of the present petitioner. For this reason alone, the petitioner did not file Revision Application before the Sessions Court though he appeared before the Magistrate Court and sought bail.

4. The learned counsel for the petitioner has submitted that the petitioner had resigned from the accused company on 8th December, 2011. The impugned cheque was issued on 3rd September, 2013 interalia process was issued on 26th February, 2014, however, in between a letter was written to ACP on 22nd September, 2013 that the petitioner is non-executive director and has no connection with issuance and signing of the cheque and day-to-day affairs of the company. He further relied on the order of this Court dated 22nd January, 2016 passed in Liquidation proceedings taken out against the accused company. The learned Single

Judge of this Court while deciding the report filed by the Liquidator has observed that the three directors, i.e., petitioner no. 1 and the persons who were shown as original accused nos. 5 and 6 had no association with the company and they were not looking into the day-to-day affairs of the company. The learned Single Judge of this Court has specifically observed that all three persons have resigned from the company and they were independent directors and not involved in day-to-day affairs of the company. Thus, the learned counsel for the petitioner has submitted that the petitioner had in fact made out a case that when he has not signed the cheque and was not connected with any activity of the company when the impugned cheque was issued, the learned Magistrate has erred in issuing process against him under sections 138 and 141 of N.I. Act. Hence, this Petition be allowed. He also submitted that the view taken by the learned Sessions Judge rejecting the Application for condonation of delay in Revision Application and consequently dismissed the Revision be set aside.

5. On perusal of the documents which are produced herewith, the fact of resignation of the petitioner from the company on 8th December, 2011 is to be accepted; especially in view of the finding given by the learned Single Judge of this Court in Liquidation proceedings. Form no. 32 was not presented before this Court to show that the information of resignation

was communicated to Registrar of Company, however, the learned Single Judge of this Court has taken into account the said point and also gave finding in respect of non filing of Form no. 32 to Registrar of Company and expressed that the petitioner and other two directors were independent directors and were involved in day-to-day affairs of the company. Admittedly the cheque dated 3rd September, 2013 is issued after the date of the resignation and so also the petitioner is not signatory to the said cheque. Under such circumstances, I accept the submissions made by the learned counsel for the petitioner. As the petitioner at the relevant time was not acting in the day-to-day affairs of the company and was not signatory to the said cheque, the order of issuance of process against him is required to be interfered.

6. At the time of issuance of process, the learned Magistrate rightly did not issue process against accused no. 5 Ashish Agarwal and accused no. 6 Prashant Agarwal who stands on the same footing like the petitioner and therefore, he ought not have issued process against accused no. 1, i.e., petitioner. This fact has to be taken into account by learned Sessions Judge at the time of deciding the application for condonation of delay. However, I do not find any point in sending the matter back to the Sessions Court by restoring the Revision.

7. In view of the facts stated before this Court, I invoke the jurisdiction under Article 227 of the Constitution of India and allow the Petition with following order:

“Rule made absolute in terms of prayer clauses (b) and (c).”

(MRIDULA BHATKAR, J.)