

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3096 OF 2016

Deepak Sharma ... Petitioner
Vs.
The State of Maharashtra & Anr. ... Respondents

Mr. Laxmal P. Kanai, Advocate for the petitioner.
Mr. S.R. Agarkar, APP for the respondent/State.
Mr. Maneesh Dixit, Advocate for respondent no. 2.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **22nd December, 2016**

P.C.:

This Writ Petition is preferred by the petitioner/original accused in respect of complaint directing against the order dated 25th June, 2014 passed by the learned Metropolitan Magistrate presiding in 59th Court, Kurla, Mumbai in Case No. 1744/SS/2014 of issuing process under section 138 of Negotiable Instruments Act. In this Writ Petition, the petitioner further challenged the order dated 29th July, 2016 passed by the learned Sessions Judge, Mumbai in Revision Application No. 255 of 2016 thereby confirming the order of issuance of process issued by the learned Metropolitan Magistrate.

2. The learned counsel for the petitioner has submitted that the order of issuance of process is erroneous. The petitioner earlier was working as a Managing Director of the company of original accused no. 1, however,

he resigned on 5th September, 2012. His resignation was intimated to the Registrar of Company Board (ROC) on 4th November, 2012. He further submitted that the cheques, subject matter of this Writ Petition, were dishonoured by the bank during the period from January 2014 to March 2014. Thus, much before the cause of action, the petitioner had resigned from his office of Managing Director. The learned counsel submitted that the petitioner is not concerned with the business of the company. He further submitted that in this Writ Petition, out of three cheques, two cheques were not signed by the petitioner but only cheque no. 005174 dated 4th December, 2013 of Rs.8,25,025/- was signed by the petitioner. The learned counsel submitted that the signatures of the petitioner, who was earlier Managing Director of the Company, were obtained on the blank cheques to meet the emergency or requirement in the routine business. Thus, the petitioner without any knowledge and concurrence have signed some blank cheques and those blank cheques were used by the company after his resignation. The petitioner has no criminal liability in his case. Hence, the order passed by the learned Magistrate of issuance of process and the order passed by the learned Additional Sessions Judge be quashed and set aside.

3. The learned counsel for respondent no.2/original complainant opposed this Petition and submitted that the petitioner was responsible for

the business activities, being erstwhile Managing Director. In all 21 cheques of big amounts were dishonoured between the period of January 2014 to March 2014. Respondent no. 2 seriously challenges the fact of resignation of the petitioner so also his disassociation with the company after his resignation. The petitioner was very much involved in the day-to-day business of the accused company and, therefore, he issued the cheque. The learned counsel supported the order passed by the learned Magistrate.

4. The impugned process is issued under section 138 of Negotiable Instruments Act. This petition pertains to three cheques, out of which, signature of the petitioner is not appearing on two cheques, however, one cheque dated 4th December, 2013 of Rs.8,25,025/- was signed by the petitioner. Assuming the fact of resignation of the petitioner in September, 2012 is true and accepted, however, under section 138 of N.I. Act, the person, who is signatory, is first responsible for the commission of offence. Hence, *prima facie* the learned Metropolitan Magistrate has rightly issued the process under section 138 and his order cannot be faulted with.

5. Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)