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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3160 OF 2016

Prabhakar Pandurang Chavan & ors. .Petitioners

Vs.

The State of Maharashtra & ors. .Respondents

Mr.G.Gokhale i/b. Ms Savita Pattni, Advocate, for the Petitioners
Mr.S.R.Agarkar, APP, for the Respondent No.1 – State
Mr.Piyush More, Advocate, for the Respondent Nos.2 to 4

CORAM : REVATI MOHITE DERE, J.

DATE : 21.10.2016

P.C.

. Heard learned counsel for the parties.

2. Respondent No.4 has filed an Affidavit-in-reply dated 19.10.2016. The same is taken on record.

3. By this Petition, the Petitioners have impugned the order of issue process dated 16.11.2015 passed by the learned Chief Judicial

Magistrate, Pune, in Cri. Complaint No. 420257/SS/2014 as against the Petitioners, as well as the order dated 10.08.2016 passed by the learned Addl. Sessions Judge, Pune, dismissing their Cri.Revn.Appln.No.276 of 2016.

4. Learned counsel for the Petitioners has impugned the aforesaid orders essentially on four grounds; (i) that the Petitioners were not the Directors of the Company in 2010, when the alleged transaction took place between the parties and when the cheques were delivered to the Respondent No.5 – Company. He submitted that the Petitioners were appointed as Directors only in 2011 and 2013. According to the learned counsel, the Petitioners were not aware of the transaction that had taken place between the Respondent No.5 – Company and the Respondent No.2 (Original Complainant) in 2009-2010. He submitted that the Petitioners cannot be made responsible or associated with the cheques,

which were issued in 2010; (ii) that the complaint was filed through the Power of Attorney Holder and that the said Power of Attorney Holder had no knowledge of the transaction that had taken place between the Respondent No.2 (Original Complainant) and the Respondent No.5 – Company. In support of the said submission, he relied on the Judgment of the Apex Court in the case of ***A.C.Narayanan vs. State of Maharashtra & Anr. in Cri.Appeal No.73 of 2007 dated 28.01.2015;*** (iii) that the cheques were given as a security and as such, the provisions of the Negotiable Instruments Act will not be applicable and (iv) that in para 12 of the complaint, the Petitioners as Directors had made payments and as such, the said conduct and act of the Petitioners show that they were diligent in making payments in general.

5. Learned counsel for the Respondent No.2 (Original Complainant) opposes the Petition. He

submitted that no interference was warranted in the impugned orders. According to him, all the issues and contentions raised by the Petitioners are matters which will have to be considered and decided by the trial Court, and that this Court in its writ jurisdiction, cannot entertain and decide the said issues.

6. Perused the papers, including the Judgments relied upon by the learned counsel for the Petitioners i.e. ***S.M.S.Pharmaceuticals Ltd. vs. Neeta Bhalla & Anr. in Cri.Appeal No.664 of 2002 dated 20.02.2007*** as well as the Judgment rendered in the case of ***A.C.Narayanan vs. State of Maharashtra & Anr. in Cri.Appeal No.73 of 2007 dated 28.01.2015***.

7. With regard to the first submission advanced by the learned counsel for the Petitioners, that the Petitioners were not the Directors of the Company in 2010, when the

alleged transaction took place and as such, the Petitioners cannot be made liable for the same is devoid of merit. Although the transaction is of 2009-2010 and the cheques were delivered in 2010, it is not in dispute, that when the cheques were dishonoured in 2014, the Petitioners were the Directors of the Company. Some of the Petitioners were appointed in 2011 and some in 2013. It is, thus, clear that the Petitioners were the Directors of the Company, at the time when the cheques were dishonoured in 2014.

8. The second submission of the learned counsel for the Petitioners, that the complaint has been filed on the basis of the Power of Attorney given by the Company and not on the personal knowledge of the Complainant, is also devoid of merit. It is not disputed that the Respondent No.2 (Original Complainant) is a partnership firm. It is also not disputed that

the Power of Attorney has been given by the Firm, to two of its representatives, who were working in the said Company/Firm as Accounts Manager/Assistant Accountant(Finance). Reliance placed on the Judgment of the Apex Court in the case of ***A.C.Narayanan (Supra)*** is misplaced. The said Judgment had considered the evidence on record, after the trial had concluded. The same is not the case here. It was observed by the Apex Court in ***A.C.Narayanan (Supra),*** that the Complainant therein, had no knowledge of the transaction and as such, had acquitted the accused of the offence. In the present case, the trial is yet to commence. Whether the Complainant has knowledge of the transaction is a matter, which will be considered by the trial Court, after evidence is led and at the conclusion of the trial.

9. As far as the third submission of the learned counsel for the Petitioners, that the

cheques were given as security, the same is a matter of evidence and will be considered by the trial Court, after evidence is led.

10. As far as the fourth & the last submission of the learned counsel for the Petitioners, that the Petitioners had paid money to the Respondent No.2 – Complainant is concerned, the same is not borne out by the record. Reliance placed on para 12 of the complaint is completely misplaced. It is to the contrary i.e. despite notice being sent, the Petitioners had failed to make any payment.

11. Considering the aforesaid, the Petition being sans merits, is dismissed.

12. It is made clear, that the observations made herein are *prima facie,* and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the

observations made in this order.

All contentions of both the parties are kept open.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)