

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 3613 OF 2015

Girishchandra Ugresan Sahoo and anotherPetitioners

V/s.

The State of Maharashtra and anotherRespondents

WITH
CRIMINAL WRIT PETITION NO. 3614 OF 2015
WITH
CRIMINAL WRIT PETITION NO. 3615 OF 2015
WITH
CRIMINAL WRIT PETITION NO. 3616 OF 2015
WITH
CRIMINAL WRIT PETITION NO. 3617 OF 2015
WITH
CRIMINAL WRIT PETITION NO. 3618 OF 2015

Shantanu Narayan Rooj and anotherPetitioners

V/s.

The State of Maharashtra and anotherRespondents

Mr. Prasad Das Advocate for Petitioner.

Mr. M. G. Shukla Advocate for Respondent no. 2

Mrs. A. A. Mane APP for the State.

CORAM : RAVINDRA V. GHUGE, J.

DATED : JULY 15, 2016.

PC :

1) Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

ism

- 2) These petitions have been filed by the Petitioners who are accused nos. 5 & 8 in all the proceedings before the Court below.
- 3) The contention of the Petitioners is that they are facing trial for an offence punishable under section 138 of the Negotiable Instruments Act 1881 r/w section 141 of the Act.
- 4) It is further submitted that these petitions are with regard to the proceedings in Criminal Complaint No. 15/SS/2014 pending before Addl. Chief Metropolitan Magistrate, 58th Court at Bandra, Case No. 16/SS/2014 pending before Addl. Chief Metropolitan Magistrate, 58th Court at Bandra, Criminal Complaint No. 29/SS/2014 pending before the Learned Metropolitan Magistrate's 28th Court at Esplanade, Case No. 355/SS/2014 pending before the Learned Metropolitan Magistrate 58th Court at Bandra, case No. 356/SS/2014 pending before the Learned Metropolitan Magistrate 58th Court at Bandra and case No. 442/SS/2014 pending before the Learned Metropolitan Magistrate 58th Court at Bandra.
- 5) It is further submitted that on identical set of facts and in between the identical litigating sides, this Court, in Criminal Writ Petition No. 2201 of 2014 along with connected matters, has dealt with the grievance of these very

petitioners who had prayed for discharge from the proceedings before the trial Court.

6) The copy of the Judgment of this Court (Coram : M. L. Tahaliyani, J.) dated 24/04/2015 delivered in the said matters in respect of the same directors, is tendered across the Bar and is marked as Exhibit 'X' for identification.

7) It is therefore submitted that these petitions will have to be allowed in terms of prayer clause 'b' and thereby the pending proceedings in connection with these petitioners will have to be quashed.

8) The learned Advocate for Respondent no. 2 in all these matters has strenuously opposed these petitions. The contention is that because this Court has passed its earlier order dated 24/04/2015, would not therefore mean that an identical order needs to be passed.

9) It is submitted that specific averments have been made against these petitioners in paragraph nos. 3, 4, 5 & 6 and hence, relief granted by this court to the Petitioners in the group of 82 petitions covered by the Judgment dated 24/04/2015, ought not be granted to these petitioners. The learned Advocate for Respondent no.2 therefore prays that all these petitions be dismissed with

costs.

10) I have considered the submissions of the learned Advocate for the Petitioners and the contesting 2nd Respondent in all these matters. I have gone through the pleadings in the original complaint in paragraph nos. 3, 4, 5 & 6 placed on record.

11) There is no dispute that it is mentioned in these pleadings that accused no. 5 is the finance controller and accused no. 8 is the whole time director of accused no. 1 Company. There is also no dispute that in each of these paragraphs, the original complainant has mentioned that accused nos. 2 to 8 are guilty of the offences. The role of accused nos. 2 to 8 are said to have been narrated in these paragraphs.

12) It would be apposite to reproduce paragraph nos. 4 to 7 of the Judgment dated 24/04/2015 hereunder:

“4 Though the Respondents (Original Complainants) are different, the petitioners in all the petitions are the same. There are two petitioners/applicants who are Directors and Finance Controller respectively of Accused No.1 Glodyne Technoserve Limited having its office at Bandra Kurla Complex, Bandra (E), Mumbai 400 051. Loan was obtained through various bills of exchange from Sona Enterprises the complainant for the Glodyne Technoserve Limited. Few

cheques were issued in respect of each bill of exchange for repayment of the loan obtained by Accused no.1 from Respondent No.2 (complainant). The cheques issued were dishonoured by the bankers of Accused No.1. The Accused No.1 Glodyne Technoserve Limited and other accused were served with the statutory notice. The payment did not come. After expiry of the statutory period, Respondent No. 2 (Complainant Sona Enterprises) filed one complaint each for each dishonoured cheque. The petitioners/applicants are made accused in all the complaints.

5 The petitioners claim that they were not incharge of the day to day business of the company/accused no.1 and that they were not responsible for the conduct of the daytoday business of the company. Both of them had resigned from the Company/Accused No.1 prior to the date of issuance of the cheques in question.

6 As far as the resignation part is concerned, it is disputed by the learned counsel Mr.Shukla on behalf of Respondent no.2. Learned counsel Mr. Das has submitted that even if resignation part is not taken into consideration for the time being, the allegations made in paragraph nos. 3,4,5 and 6 of the complaint are not sufficient to describe the specific role of the petitioners/ applicants at the time of commission of the alleged offence. The learned counsel Mr. Shukla has brought to my notice that the role of the applicants has been described in the complaint in as much as it has been stated that the applicants were present when the loan was extended and that they had assured

repayment within time. No doubt these averments are made in the complaints but these averments appear to be vague and bald allegations. There is no mention of place, time and date of presence of the applicants when they had assured for repayment. Admittedly the cheques were signed by the two other Directors and bills of exchange were also signed by the other Directors. There is no specific role assigned to the Petitioners/applicants in any of the complaints. Hence, the proceedings pending against the petitioners/applicants need to be quashed.

7 The proceedings pending against the petitioners/applicants vide criminal cases mentioned in column 3 of the table below, pending in the courts mentioned in column 4 of the table below shall stand quashed.

Sr.No	Criminal Writ Petition No.	Complaint Case No.	Trail Court	Name of Complainant
1	2201/2014	116/SS/2014	28th Court at Esplanade	Yogesh Tulsidas Shah (HUF)
2	1739/2014	235/SS/2014	28th Court at Esplanade	Abdullabhai Fidaalli & Co.
3	1670/2014	2029/SS/2013	58th Court at Bandra	Sona Enterprises
4	1669/2014	1961/SS/2013	58th Court at Bandra	Vraksham's Varkha
5	1668/2014	1962/SS/2013	58th Court at Bandra	Sona Enterprises
6	1667/2014	2031/SS/2013	58th Court at Bandra	Vraksham's Varkha
7	1666/2014	1960/SS/2013	58th Court at Bandra	Vraksham's Varkha

8	1665/2014	2030/SS/2013	58th Court at Bandra	Vraksham's Varkha
9	397/2014	1535/SS/2013	28th Court at Esplanade	Mustan T Kagalwala
10	396/2014	1207/SS/2013	28th Court at Esplanade	Mustan T Kagalwala
11	395/2014	1515/ss/2013	28th Court at Esplanade	Yogesh Tulsidas Shah
12	394/2014	1565/SS/2013	28th Court at Esplanade	Ashok Sah (H.U.F)
13	393/2014	1513/SS/2013	28th Court at Esplanade	Yogesh Tulsidas Shah
14	392/2014	1181/SS/2013	28th Court at Esplanade	Bipin Tulsidas Shah
15	390/2014	1203/SS/2013	28th Court at Esplanade	Yogesh Tulsidas Shah
16	389/2014	1532/ss/2013	28th Court at Esplanade	Yogesh Tulsidas Shah
17	388/2014	1418/ss/2013	7th Court at Bhiwada, Dadar	Kamlesh Lamba
18	387/2014	1179/SS/2013	28th Court at Esplanade	Ashok J Thawani
19	386/2014	1417/ss/2013	7th Court at Bhiwada, Dadar	Kamlesh Lamba
20	385/2014	1204/SS/2013	28th Court at Esplanade	Bipin T. Shah
21	384/2014	2004/SS/2013	28th Court at Esplanade	Sona Enterprises
22	383/2014	1180/ss/2013	28th Court at Esplanade	Nayan T. Shah HUF
23	382/2014	1202/SS/2013	28th Court at Esplanade	Ravison Stores Private Limited
24	381/2014	1961/SS/2013	58th Court at Bandra	Vraksham's Varkha

25	380/2014	1962/SS/2013	58th Court at Bandra	Sona Enterprises
26	379/2014	2031/SS/2013	58th Court at Bandra	Vraksham's Varkha
27	378/2014	1960/SS/2013	58th Court at Bandra	Vraksham's Varkha
28	2215/2014	257/SS/2014	28th Court at Esplanade	Mustan T Kagalwala
29	2214/2014	234/SS/2014	28th Court at Esplanade	Anjana Bipin Shah
30	2213/2014	233/SS/2014	28th Court at Esplanade	Anjana Bipin Shah
31	2212/2014	232/SS/2014	28th Court at Esplanade	Anjana Bipin Shah
32	2211/2014	99/SS/2014	28th Court at Esplanade	Yogesh Tulsidas Shah (HUF)
33	2210/2014	34/SS/2014	28th Court at Esplanade	Yogesh Tulsidas Shah (HUF)
34	2209/2014	33/SS/2014	28th Court at Esplanade	Ashok Sah (H.U.F)
35	2208/2014	32/SS/2014	28th Court at Esplanade	Harsh Yogesh Shah
36	2207/2014	31/SS/2014	28th Court at Esplanade	Mustan T Kagalwala
37	2206/2014	30/SS/2014	28th Court at Esplanade	Bipin T Shah HUF
38	2205/2014	120/SS/2014	28th Court at Esplanade	Nayan T. Shah HUF
39	2204/2014	119/SS/2014	28th Court at Esplanade	Nayan T. Shah HUF
40	2203/2014	118/SS/2014	28th Court at Esplanade	Yogesh Tulsidas Shah
41	2202/2014	117/SS/2014	28th Court at Esplanade	Raksha Narayan Shah

42	3741/2014	464/SS/2013	69th Court at Mazgaon	Ramchand Atrmaram Nagpal
43	3742/2014	450/SS/2013	69th Court at Mazgaon	Dilipkumar Atrmaram Nagpal
44	3743/2014	443/SS/2013	69th Court at Mazgaon	Dilipkumar Atrmaram Nagpal
45	3744/2014	453/SS/2013	69th Court at Mazgaon	Suresh Atrmaram Nagpal
46	3745/2014	437/SS/2013	69th Court at Mazgaon	Suresh Atrmaram Nagpal
47	3746/2014	451/SS/2013	69th Court at Mazgaon	Suresh Atrmaram Nagpal
48	3734/2014	452/SS/2013	69th Court at Mazgaon	Suresh Atrmaram Nagpal
49	3735/2014	438/SS/2013	69th Court at Mazgaon	Suresh Atrmaram Nagpal
50	3736/2014	463/SS/2013	69th Court at Mazgaon	Suresh Atrmaram Nagpal
51	3737/2014	465/SS/2013	69th Court at Mazgaon	Dilipkumar Atrmaram Nagpal
52	3738/2014	442/SS/2013	69th Court at Mazgaon	Dilipkumar Atrmaram Nagpal
53	3739/2014	455/SS/2013	69th Court at Mazgaon	Ramchand Atrmaram Nagpal
54	3740/2014	454/SS/2013	69th Court at Mazgaon	Ramchand Atrmaram Nagpal
55	4791/2014	3287/SS/2014	70th Court at Mazgaon	Atrmaram Ramchand Co.
56	4792/2014	3288/SS/2014	70th Court at Mazgaon	Atrmaram Ramchand Co.
57	4793/2014	3291/SS/2014	70th Court at Mazgaon	Atrmaram Broking Co. Pvt Ltd

58	4794/2014	3286/SS/2014	70th Court at Mazgaon	Atrmaram Ramchand Co.
59	4795/2014	3285/SS/2014	70th Court at Mazgaon	Atrmaram Ramchand Co.
60	4796/2014	3284/SS/2014	70th Court at Mazgaon	Atrmaram Ramchand Co.
61	4797/2014	697/SS/2014	70th Court at Mazgaon	Atrmaram Broking Co. Pvt Ltd
62	4798/2014	3283/SS/2014	70th Court at Mazgaon	Atrmaram Ramchand Co.
63	4799/2014	3292/SS/2014	70th Court at Mazgaon	Atrmaram Broking Co. Pvt Ltd
64	4800/2014	3293/SS/2014	70th Court at Mazgaon	Atrmaram Broking Co. Pvt Ltd
65	4801/2014	3294/SS/2014	70th Court at Mazgaon	Atrmaram & Sons
66	4802/2014	3295/SS/2014	70th Court at Mazgaon	Atrmaram & Sons
67	4803/2014	3296/SS/2014	70th Court at Mazgaon	Atrmaram & Sons
68	4804/2014	3297/SS/2014	70th Court at Mazgaon	Atrmaram & Sons
69	724/2015	108/SS/2014	58th Court at Bandra	Kavita Berry
70	725/2015	109/SS/2014	58th Court at Bandra	Prem B Jagasia
71	726/2015	110/SS/2014	58th Court at Bandra	Deepika Samant
72	727/2015	111/SS/2014	58th Court at Bandra	Deepika Samant
73	728/2015	203/SS/2014	58th Court at Bandra	Deepika Samant

74	729/2015	204/SS/2014	58th Court at Bandra	Golden Gate Bridge
75	730/2015	205/SS/2014	58th Court at Bandra	Om Investments
76	731/2015	330/SS/2014	58th Court at Bandra	Kavita Sanjeev Berry
77	732/2015	331/SS/2014	58th Court at Bandra	Kamlesh Lamba
78	733/2015	332/SS/2014	58th Court at Bandra	Pranav Bhatt
79	720/2015	104/SS/2014	58th Court at Bandra	Vraksham's Varkha
80	721/2015	105/SS/2014	58th Court at Bandra	Vraksham's Varkha
81	722/2015	106/SS/2014	58th Court at Bandra	Vraksham's Varkha
82	723/2015	107/SS/2014	58th Court at Bandra	Dutch Dividends

13) To a specific query posed by the Court, both the litigating sides submit that beneficiaries of Judgment dated 24/04/2015 are the same persons in these cases and they are accused nos. 5 & 8 in the proceedings before the learned Magistrate. There is no dispute that these petitioners in identical set of facts are the beneficiaries of the Judgment of this Court dated 24/04/2015.

14) In the light of the above, I do not find any such circumstances which would convince me to take a view different from the view taken by this Court vide its Judgment dated 24/04/2015 Exhibit 'X'.

- 15) As such, these petitions are allowed in following terms:-
- a) The impugned orders dated 06/03/2014 in case nos. 15/SS/2014 and 16/SS/2014, dated 15/03/2014 in case no. 29/SS/2014, dated 21/05/2014 in case nos. 355/SS/2014 and 356/SS/2014 and dated 25/04/2014 in case no. 442/SS/2014 are hereby quashed and set aside to the extent of these Petitioners.
 - b) The above proceedings in the said criminal cases are quashed to the extent of the Petitioners.
 - c) Bail bonds of these petitioners, if any, stand cancelled.
- 16) Rule is made absolute in the above terms.
- 17) No costs.

(RAVINDRA V. GHUGE, J.)