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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3681 OF.2014

Hiralal Ambalal Jain	]	
age: 77	]	.. <u>Petitioner</u>
residing at: E9, Commonwealth Bldg.	]	Original
Bund Garden, Pune 411 001	]	complainant

V/s.

1. Indage Vintners Ltd.	]	
(Formerly known as “Champagne Indage	]	
Limited)	]	
Indage House, 82, Dr. Annie Besant Road	]	
Worli, Mumbai 400 018	]	
	]	
2. Mr. Ranjeet S. Chougule	]	
Managing Director,	]	
Champagne House	]	
69, Khan Abdul Gaffar Khan road	]	
Worli Sea face, Mumbai 400 026	]	
	]	
3. Rajesh Bhalchandra Chalke	]	
Chief Financial Officer	]	
204, Siddhivinayak Arcade	]	... <u>Respondents.</u>
CHS Gavdevi, 'G' Gupte Road	]	Original
Dombivali (W), Thane 421 202	]	accused
	]	
4. Arun Babulal Shah	]	
Vice Chairman	]	
262 B Ishwar Bhuvan Malviya Road	]	
Ville Parle (E), Mumbai 400 057	]	
	]	
5. Gajanan Mulay	]	
Vice President Finance	]	
IndageHouse, 82, Dr. Annie Besant road]	]	
Worli, Mumbai 400 018	]	

6. Girish V. Kirkinde]
Company Secretary and GM Legal]
7, Heramb Darshan, Santoshi Mata Temple Rd]
Kalyan (W) 421 301]
7. State of Maharashtra]

Mr. Aditya Bapat i/by Mr. Nachiket V. Khaladkar, for the Petitioner.
Mr. S. H. Yadav, APP for the State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 13th JANUARY, 2016.

Oral Judgment: [Per: Dr. Shalini Phansalkar Joshi, J.]

1. This writ petition takes an exception to the judgment and order passed by the Additional Sessions Judge, Pune in Criminal Revision Application No.824 of 2013. By the impugned order dated 16th July, 2014, he has dismissed the revision and thereby confirmed the order passed by Judicial Magistrate First Class below Exh.76 in S.C.C. NO.52972/2009 dated 2nd January, 2013, refusing to add the name of respondent company as accused in the prosecution case.

2. Facts of the writ petition lie in a narrow compass and are to the effect that the petitioner had filed criminal proceeding under Section 138 of the Negotiable Instruments Act against respondent No.1 company

and its Directors. The process was issued against the company and its Directors. As the company went into liquidation and winding up order was passed on 19th March, 2010, application was moved before the trial Court at Exh.16 seeking to withdraw prosecution against company; mainly relying on the law then prevailing as laid down in **Anil Hada -vs- Indian Acrylic Ltd. A.I.R.2000 S.C.145**, according to which joining of the company was not a sine-qua non for proceeding under Section 138 of the Negotiable Instruments Act. The trial Court granted permission to withdraw the prosecution against the company. Later on legal position changed and therefore, another application vide Exh.76 was filed by the petitioner before trial Court to retain the name of accused No.1 on record, as it was earlier.

3. The trial Court, however, rejected the said application on the ground that withdrawal of the complaint against company has an effect of acquittal and therefore, there would be bar under Section 300 of Code of Criminal Procedure if name of company is allowed to be brought on record again as accused in the proceeding. This order of the trial Court, was confirmed by the Sessions Court also in its revisional jurisdiction by holding that there is no such provision to rejoin the accused once the case is withdrawn against him as it has the effect of

acquittal and thus attracts the bar of double jeopardy under Section 300 of Code of Criminal Procedure. It was further observed by the trial Court and the Sessions Court that only remedy available to the petitioner was to move High Court in writ jurisdiction. Accordingly, the petitioner has preferred this Writ petition.

4. Notice of this Writ Petition was duly served on the respondent company. Affidavit of service is also filed on record. Respondent, however, failed to appear before this Court. Hence after hearing learned counsel for petitioner and going through the case law relied upon by him, this writ petition is being decided.

5. At the outset itself, it has to be stated that the bar under Section 300 of Code of Criminal Procedure cannot be applicable to the instant case as there was no trial. The name of respondent company was withdrawn even before the trial commenced and therefore, bar of double jeopardy will not be attracted.

6. Now the question is whether in the interest of substantial justice under inherent powers of this Court, in view of Section 482 of Code of Criminal Procedure, the petitioner can be permitted to rejoin the respondent company as accused in the present case. The entire crux of the dispute appears to be that as the company went into liquidation, the

learned counsel for the petitioner relied the law laid down in **Anil Hada -vs- Indian Acrylic Ltd. A.I.R.2000 S.C.145**, wherein it was held that prosecution of the company alongwith Directors of the company under Section 138 of the Negotiable Instrument Act, was not sine-qua. It was further held that if the company is not prosecuted due to any legal sanction or otherwise, other prosecuted persons cannot on score escape from penal liability created to the legal fiction envisaged under Section 141 of the Negotiable Instruments Act. Relying on this legal position, the petitioner sought withdrawal of prosecution against company.

7. This legal position changed as in the case of **Aneeta Hada -vs- Godfather Travels and Tours Pvt. Ltd [AIR 2012 SC 2795]**, the Apex Court was pleased to overrule this legal position laid down in case of **Anil Hada -vs- Indian Acrylic Ltd. A.I.R.2000 S.C.145**, and it was held that the company is also necessary party for prosecution under Section 138 read with 141 of Negotiable Instruments Act. In view thereof, the petitioner was constrained to file application for rejoining of the company as accused in the case.

8. In my considered opinion, interest of justice requires, in the light of changed legal position that company should also be

prosecuted for the offence. As the trial has not commenced, there is also no legal bar applicable under Section 300 of the Code of Criminal Procedure. Under Section 482 of Code of Criminal Procedure, in exercise of its inherent powers, this Court can, therefore, allow application of the petitioner of joining respondent No.1 company as accused in the present case.

9. This writ petition is therefore allowed. The impugned order passed by the Judicial Magistrate First Class Court No.3, Pune and confirmed by the Sessions Court is quashed and set aside. Application of the petitioner filed before trial Court at Exh.76 is allowed and he is permitted to implead respondent No.1 as accused in the Criminal Case No.52972/2009.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

CERTIFICATE

Certified to be true and correct copy of the original signed judgment.