IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1082 OF 2015

Hemangini Bharat Parekh .. Applicant

V/s

Mr. Laljibhai Umarshi Veera & Ors. .. Respondents

Mr. Siddarth Muraka i/b Aviraj S. Tarar for the applicant
Mr .Subhash Dhadge for the respondent no.1
Mrs. R.V. Newton, APP for the respondent State

CORAM : SMT. ANUJA PRABHUDESSAI, J.
Reserved on : 26th October, 2015
Pronounced on : 25th January, 2016

P.C. :

1. Rule. Rule made returnable forthwith. With consent of the parties the matter is taken up for final hearing.

2. The applicant who is the original accused no.3 in Criminal Case No.11496/SS/2010 filed u/s 138 by this application challenged

the order dated 7.05.2015 whereby the Metropolitan Magistrate has allowed the respondent no.1 complainant to withdraw the complaint as against the respondent nos. 4 and 5 and consequently acquitted the accused nos. 4 and 5 for offence u/s 138 of the N.I. Act.

3. The brief facts necessary to decide the application are as under. The respondent no.1 who is the original complainant had lodged the complaint u/s 138 of the N.I Act against the accused no.1 partnership firm M/s. Sangeeta Prints and its partners being the applicant herein and respondent nos. 2 to 5 for the offence u/s 138 of the N.I. Act. The respondent no.1 complainant had alleged that he had allowed the accused no.1, a proprietorship concern, through its proprietor - accused no.2 to use his factory building for carrying out the business of the accused no.1 on payment of compensation of Rs.50,000/- per month. In the meantime, the accused no.1 concern was converted into the partnership firm under the deed of partnership dated 30.11.2008 executed by the accused nos. 2 to

5 as the partners of the said firm. The complainant has stated that the partnership firm had taken over all the assets and liabilities of the proprietorship concern as on the closing day of 30th November, 2008. Thus, the liability of the proprietorship concern to pay the monthly compensation of Rs.50,000/- was taken over by the partnership firm and accordingly the partnership firm had issued 25 cheques for total amount of Rs.21 lakhs towards the compensation for the use of factory building from 16.10.2006 till 31.10.2009 and to cover future liability, at the same rate for the future period during which the factory premises would be used by the partnership firm. The complainant had stated that out of 25 cheques, 17 cheques for an amount of Rs.1 lakh each were signed by the respondent no.3 Bharat Parekh (orig. accused no.2) as a partner of the accused no.1 firm while 8 cheques for an amount of Rs.50,000/- each were singed by the accused no.5 as the partners of accused no.1 partnership firm. The complainant had stated that all the said cheques were dishonoured (prema) exceeded arrangement. P-20. The complainant had sent the

demand notice to the partnership firm and the partners and the accused no1. And the partners having failed to pay the amount, the complainant filed a complaint u/s 138 of the N.I. Act against the accused no1. Partnership firm and against the applicant and the respondent nos. 2 to 5 on the ground that at the relevant time they were responsible for the conduct of the business of the accused no.1.

4. The learned Magistrate has issued process against the partnership firm and all its partners for offence u/s 138 r/w 141 of the N.I. Act. In the course of the trial, the complainant filed an application u/s 257 of the Cr.P.C. to withdraw the complaint against the respondents / accused nos. 4 and 5 on the ground that the accused nos. 4 and 5 have accepted their liability of Rs.4,00,000/- and had issued eight cheques of Rs.50,000/- each. The other partners had objected to the withdrawal of the complaint against the accused nos. 4 and 5 on the ground that they were jointly and severally liable to pay the debt of the partnership firm. After considering the

submissions of the respective parties, the learned Magistrate vide order dated7.05.2015 allowed the application and thereby permitted the respondent no.1 complainant to withdraw the complaint as against the respondents/accused nos. 4 and 5 and consequently acquitted the accused nos. 4 and 5 for the offence u/s 138 of the N.I. Act.

5. Being aggrieved by the said order, the original accused no.2 / respondent no.3 herein had challenged the order before the Sessions Court, Greater Bombay in Revision Application No.690 of 2015. The said application was dismissed by the learned Sessions Judge by order dated 24.06.2015 mainly on the ground that no revision was maintainable against the order of acquittal. Upon dismissal fo the said revision, the applicant who was the orig. accused no.3 has invoked the inherent powers of this Court u/s 482 of the Cr.P.C. to challenge the impugned order dated 07.05.2015.

6. The learned Counsel Mr. Muraka for the applicant has submitted that in terms of Section 141 (1) of the N.I. Act, every

person who, at the time of the offence was incharge of and responsible for the conduct of the business of the firm is deemed to be guilty of the offence and is liable to be proceeded against and punished accordingly. He has submitted that the partner is an agent of the firm and u/s 25 of the Partnership firm Act, every partner is jointly and severally liable for the acts of the firm and further in terms of Section 26 of the Partnership firm Act, the firm is liable to the same extent as the partners for loss or injury is caused to any third person due to wrongful act or omission of the partners. The learned Counsel for the applicant therefore submits that the learned Magistrate was therefore contends that since the liability of accused nos. 4 and 5 was joint and several the learned Magistrate was not justified in acquitting the respondent nos. 4 and 5 of the offence u/s 138 of the N.I. Act. The learned Counsel for the applicant further submitted that that the learned Magistrate has not assigned any reasons for allowing the application u/s 257 of the Cr.P.C.

7. The learned Counsel for the respondent nos. 4 and 5 has

submitted that the total liability of the partnership firm was 4 lakhs whereas the liability of the proprietorship concern were 17 lakhs. He has submitted that the respondent nos. 4 and 5 having paid the amount of Rs.4 lakhs the complainant did not wish to proceed against them and under the circumstances the Magistrate was justified in acquitting the accused nos. 4 and 5 for the offence u/s 138 of the N.I. Act.

8. I have perused the records and considered the submissions advanced by the learned Counsels for the respective parties. The averments made in the complaint reveal that the complainant had allowed M/s. Sangeeta Prints, the then Proprietorship concern through its proprietor Bharat Parekh to use his factory premises on payment of compensation of Rs.50,000/- per month w.e.f. 16.10.2006. The respondent no.2 Bharat Parekh, the proprietor of Sangeeta Prints had not paid the said compensation and in the meantime by deed of partnership dated 20.11.2008, the said proprietorship concern was converted into a partnership firm with the accused nos. 2

to 5 as its partners. A perusal of the deed of partnership firm reveals that the parties / partners had agreed to carry on the same business in partnership under the name and style M/s. Sangeeta Prints by taking over all its assets and liabilities as on the closing dated 30.11.2008 in the books of M/s. Snageeta Prints of which the party of the first part was the proprietor. The deed of partnership therefore, reveals that all the liabilities of the proprietorship concern as on 30.11.2008 were taken over by the partnership firm.

9. The subject cheques were issued from the account of the partnership firm. The firm was, therefore, the offender and the applicants as well as the accused no.4 and accused no.5 were prosecuted as the Partners of the firm with aid of Section 141 of the N.I. Act. It has to be borne in mind that every partner of the firm is an agent of the partnership firm. In terms of Section 25 of the Partnership Act, every partner is jointly and severally liable for all acts of the firm done while he is a partner. In the instant case, though the accused nos. 4 and 5,

as agents of the partnership firm, were liable to the acts of the firm, the complainant has chosen not to proceed against them. The liability of the partners being joint and several, the applicant partners cannot compel the complainant to proceed against any individual partner. Furthermore the question whether the cheque was issued by the firm towards the legally enforceable debt is a matter of trial. The defence of these applicants, if any, as regards their liability can always be raised in the course of the trial. Hence, in my considered view, the complainant having chosen not to proceed the accused nos. 4 and 5, he cannot be directed to proceed against them.

10. Under the circumstances, the application has no merits and is hereby dismissed.

[ANUJA PRABHUDESSAI, J.]