

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 4924 OF 2015**

Nilesh Balasaheb Bhintade .. Petitioner
versus
SBI Global Factors Ltd. & Ors. .. Respondents

None for Petitioner.

Mr. Yashpal Thakur i/b. M/s. PKA Advocates for Respondent No. 1.

Ms S. V. Sonawane – APP for State – Respondent No. 2.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.**

DATE : 25 NOVEMBER 2016

P.C.:

1] Today the matter was taken up at the instance of respondent no. 1 before us who is moving to see that his action under Section 138 of the Negotiable Instruments Act against the present petitioner comes to a logical end. Apparently, the respondent before us who was the complainant in 138 N.I. Act proceedings has served the Advocate for the petitioner and informed him that the matter will be taken up. The matter is even otherwise listed on the cause list.

2] Learned counsel for respondent no. 1 has brought to our notice that similar application with similar prayers by the very same petitioner represented by the very same Advocate was earlier disposed of in criminal writ petition no. 1986 of 2013, wherein after upholding the constitutional validity of Sections 138 and 141 of the N.I. Act, the Division Bench of this Court imposed costs of Rs.50,000/- on the petitioner to be paid to the third respondent by opining that the

very nature of challenge raised in the said petition calls for such stringent action on the part of the Court.

3] Apparently, no such costs are paid till date. The petitioner herein faces an order of conviction in the proceedings taken out under section 138 of the N.I. Act. Said order of conviction and judgment are the subject-matter of challenge before the Sessions Judge wherein an order of stay is granted subject to deposit of 25% of the compensation amount declared by the trial court. Apparently, even the said amount is not tendered by the petitioner. On the other hand, he comes up with the present petition seeking very same reliefs, that too suppressing the fact of earlier criminal writ petition no. 1986 of 2013 wherein similar prayers were sought by the petitioner.

4] For the purposes of convenience, we quote the following prayers indicated in the petition:

“(a) issue an appropriate writ, order or direction, quashing and setting aside the order dated 6.12.2014 passed by the learned Sessions Judge in Appeal No. 112 of 2014, a copy whereof could not be produced, for, it is not yet ready, as unconstitutional and void inasmuch as a right of appeal is one of the most inalienable, transcendental and primordial basic feature of the Constitution and if such a right were not considered to be so, the very right to life and liberty enshrined in Articles 14, 19 and 21 of the Constitution will be rendered nugatory, for, the very right to life and liberty could be allowed to be taken away or abrogated without due process of law;

(b) declare that the orders dated 18th June, 2014 passed by the learned Metropolitan Magistrate, 58th Court, Bandra, Mumbai, in Case No. 4949/ss/2009, the complaint dated 4th September 2009 at the hands of Respondent No. 1 under Section 138 of the Negotiable Instruments Act, 1881 and the orders dated 8.1.2014 and 24.1.2014

passed by the learned Metropolitan Magistrate, 58th Court, Bandra, Mumbai, in Case No.4949/ss/2009, under Sections 326(3) and 219 of the Criminal Procedure Code are unconstitutional and void ab initio and issue a consequential writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the same;

(c) issue an appropriate writ, order or declaration declaring that the presumption contained in Section 138 as also Section 141 of the Negotiable Instruments Act, 1881, which provides that “every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence”, are unconstitutional and void inasmuch as it is in violation of Part III of the Constitution, so also the second proviso to Section 141 in its entirety inasmuch as it discriminates between two sets of Directors, namely, persons like the Petitioner who is name-sake Directors, who are deemed to be guilty of the offence, and those Directors who are nominated as such by virtue of their holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, who shall not be liable for prosecution;

(d) pass such further and other orders as the nature and circumstances of the case may warrant.”

5] We note from the prayers or from the challenge, the validity of Sections 138 and 141 of the N.I. Act order dated 6th December 2014 passed by the learned Sessions Judge and also the order dated 18th June 2014 passed by the Metropolitan Magistrate's, 58th Court, Bandra, Mumbai, are also challenged. In order to contend that there are different prayers in the present petition, the order of the Metropolitan Magistrate and the interim order of the Sessions Court are challenged before this Court as prayers (a) and (b). Prayer (c) is

with regard to Sections 138 and 141. We fail to understand how prayers (a) and (b) could be entertained unless we entertain prayer (c). If prayer (c) is already answered in criminal writ petition no. 1986 of 2013, same cannot be the subject-matter of consideration once again in this petition. The course of action would have been to challenge the order dated 22nd September 2014 in criminal writ petition no. 1986 of 2013.

6] In the above circumstances, the intention of the petitioner is crystal clear that he intends to prolong the matter with one reason or the other by filing one petition after the other irrespective of filing similar petitions and inviting adverse orders. The course of action now engineered is nothing but another such tactic on the part of the petitioner not only to cause hurdles to proceed with the matter before the Sessions Court to saddle this Court with unnecessary and unwarranted litigation. This calls for strict action against the petitioner since he has not only filed a frivolous petition but suppressed the fact of seeking such reliefs in the earlier petition. Accordingly, we impose costs of Rs.1,00,000/- (Rupees One Lac only) on the petitioner in filing this petition.

7] The petition is dismissed. Costs of Rs.1,00,000/- (Rupees One Lac only) shall be paid to the Maharashtra State Legal Services Authority. If costs are not paid, the Maharashtra State Legal Services Authority is entitled to recover the same in accordance with the procedure contemplated.

CHIEF JUSTICE

(M. S. SONAK, J.)