

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.11 OF 2015

Mr.Rangrajan Ramaswamy ... Applicant
Versus
Mr.Venkateshwar Onkarmal Somani and anr. ... Respondents

**WITH
CRIMINAL APPLICATION NO.12 OF 2015**

Mr.Rangrajan Ramaswamy ... Applicant
Versus
Mr.Venkateshwar Onkarmal Somani and anr. ... Respondents

**WITH
CRIMINAL APPLICATION NO.13 OF 2015**

Mr.Rangrajan Ramaswamy and anr. ... Applicants
Versus
Mr.Venkateshwar Onkarmal Somani and anr. ... Respondents

Mr.Swapnil Ambure with Mr.Mikhail Dey i/by M/s Dinesh Tiwari & Associates, Advocate for the Applicant.

Mr. Prasanna Bhangale i/by M/s Munir M. Merchant, Advocate for the Respondent No.1.

Mr.Pallavi Dabholkar, APP for the State/Respondent No.2.

**CORAM : RAVINDRA V.GHUGE, J.
DATE : 22 MARCH, 2017.**

P.C. :

1. In all these Petitions, the Applicants are challenging the issuance of process by the Trial Court. There are three cases

bearing No.518/SS/2014, 632/SS/2014 and 196/SS/2014, which are pending before the learned Metropolitan Magistrate, 23rd, Esplanade.

2. I have heard the learned counsel for the respective sides at length.

3. In so far as the process having been issued against Mrs. Sonali Vasudev Tipse in case No. 196/SS/2014 is concerned, learned counsel for the original complainant submits that the record would reveal that the concerned lady had become a Non-Executive Director of the company on 14th November, 2013 and had resigned on 14th February, 2014. The record reveals that the transaction between the applicant and accused does not relate to the period, when Mrs. Tipse was the Non-Executive Director. The learned counsel for the complainant therefore, submits that the process issued against her in this case could be quashed.

4. In so far as the role of the applicant No. 1-Mr. Rangrajan Ramaswamy in all the 3 cases is concerned, the applicant has strenuously contended that he has no role to play in the whole matter. He is a Non-Executive Director. His case is squarely covered by the judgment of the Hon'ble Supreme Court in the matter of **Pooja Ravinder Devidasani Vs. State of Maharashtra and anr**, 2014 SCC Online SC 1020. It is

vehemently submitted that once it is evident that the said applicant being a Non-Executive Director is unconcerned with the matter, the process issued against him needs to be quashed.

5. In the light of the submissions of the learned Advocates, I have gone through the Petition-paperbook with their assistance.

6. The complainant has specifically averred in the complaint that the instant applicant is one of those Directors, who was in active management and was participating in the day to day operations and affairs of the company. The complainant had interaction with the said applicant alongwith other Directors and on the basis of the said interaction, the complainant has invested Rs.20,00,000/-. Details of the payments made through account payee cheques are indicated and the refund of the investments through the refund account are also specifically averred in the body of the complaint.

7. In the matter of **Gunmala Sales Private Limited Vs. Anu Mehta and others, (2015)1 SCC 103** the Apex Court has observed in paragraph Nos. 34.1 to 34.4 as under :

“Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of

the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director.

If a Petition is filed under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.

In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about the role of the Director in the complaint. It may do so having come across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the

notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed.

No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but nothing prevents its from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director.”

8. In the memo of the Petitions, the said Applicant has specifically stated in paragraph No. 6(e)(i) to (v) that the responsibility and the role of the said Director was (1) to oversee the operations of the company, (2) Review the accounts of the company, (3) give guidance to the company in the area of expertise and regular attendance at the board meeting and other committee meetings to generally monitor the working of the company.

9. This would therefore, make it clear that the concerned applicant though being a Non-Executive Director had the

expertise to monitor the growth of business of the company and he was In-charge of reviewing the accounts of the company. The original complainant has specifically stated that the cheques issued to him by way of returns of his investments, was through the refund accounts of the company.

10. Considering the above and keeping in view the ratio laid down by the Apex Court in **Gunmala Sales case (supra)**, it is evident that the Trial Court, while issuing process is required to take into account the contents of the complaint and the role attributed to a particular person. From the pleadings in the complaint and from the averments of the said applicant in paragraph No.6(e) of the memo of the application, it is apparent that he was closely monitoring the day to day functions of the company, its business growth and operations and its enhancement. Considering the above, I do not find the Trial Court has erred in issuing process against the said applicant namely Rangrajan Ramaswamy.

11. In the light of the above, Criminal Application No.13 of 2015 is partly allowed to the extent of Applicant No. 2 namely Mrs. Sonali Vasudev Tipre and the order of issuance of process against her in CC No. 196/SS/2014 is quashed and set aside by consent. The said Criminal Application No. 13 of 2015 stands rejected to the extent of applicant No. 1-Mr. Rangrajan Ramaswamy. So also Criminal Application Nos.11 and 12 of

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7 905 apl 11-15 with apl 12-15 with apl 13-15-cr

2015 filed by Mr. Rangrajan Ramaswamy are rejected.

(RAVINDRA V.GHUGE, J.)