

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2412 OF 2002**

Mr. P. Sadasivan,
Chairman,
Sir M.V. Educational Trust,
R/o : No. 481, 6th Main Road,
HMT Layout, R.T. Nagar Post,
Bangalore – 560 032

.... Applicant
(Ori. accused no.2)

Vs.

1 ALPIC Finance Limited
Having it's office at :
New Excelsior Building,
6th Floor, Wallace Street,
Fort, Mumbai – 400 001

.... Respondent no.1
(Ori. complainant)

2 The State of Maharashtra

.... Respondent

Mr. Ganesh Gole, Advocate for the Applicant.
Mr. S.R. Agarkar, A.P.P. for the respondent- State.

Coram : Smt. R.P. SondurBaldota, J.

Date : 10th February, 2017

JUDGMENT :-

1 This application filed under Section 482 Code of Criminal Procedure (“Cr.P.C.”) is for quashing and setting aside of the order dtd. 17th July, 2000 passed by the Metropolitan Magistrate, 28th Court, Esplanade, Mumbai of issuing process in Criminal Case No.1100/S/2000.

2 The applicant is the Chairman of a Trust by name Sir M.V. Educational Trust, which is also an accused in the criminal case filed by respondent no.1 for the offence punishable under Section 138 read with Section 141 of Negotiable Instruments Act. Respondent no.1 is a limited company engaged in the business of financial and other related activities such as leasing, hire-purchase, bill discounting etc. The Trust had approached respondent no.2 for availing lease financial facility in connection with hydraulically operated Dental Chairs for it's College. It entered into Lease Agreement dtd. 20th January, 1997 for availing of lease facilities in respect of hundred hydraulically operated Dental Chairs at the total value of Rs.92,50,000/- including the interest charged by respondent no.1 for leasing them. As per the agreement, the lease-rentals were to be paid quarterly. Since the period of lease agreement was of 48 months, 17 post-dated cheques had been issued to respondent no.1 in that behalf. One of the cheques being Cheque no.375346 dtd. 1st May, 2000 for the sum of Rs.6,25,000/-.

3 On 2nd May, 1999, respondent no.1 filed complaint in the Court of Additional Chief Metropolitan Magistrate, Bangalore against the applicant and two other persons alleging commission of offences punishable under Sections 420, 406, 423, 424 read with 120-B Indian Penal Code alleging that the

accused in the case had committed breach of the terms of lease-agreement dtd. 28th January, 1997. One of the allegations therein was that some post-dated cheques issued towards the lease-rentals were not honoured. In that complaint, respondent no.1 filed an application under Section 93 of Cr.P.C. praying for the search warrant for seizure of 100 hydraulically operated Dental Chairs and it's accessories, which were the subject matter of the lease-agreement.

4 The trial court, by it's order dtd. 11th February, 1999 issued the search warrant authorising the Police Inspector to search for the chairs and the accessories, to seize them and deliver them to respondent no.1. Pursuant to the notice, the Police on 10th April, 1999 seized 74 Dental Chairs and the accessories and handed custody of the same to respondent no.1 under the acknowledgment dtd.10th April, 1999. The acknowledgment in respect thereof was given by one Pawan Kumar on behalf of respondent no.1. Being aggrieved by the order, the Trust and other accused had preferred Criminal Revision Petition No.327 of 1999 to the High Court at Bangalore questioning the proceedings and praying for return of articles that had been seized. By the order dtd. 22nd November, 1999, the Karnataka High Court allowed the petition and set aside the order of issuance of process and also the order of search and seizure of the property. It further directed that the property should be returned to the Trust and the other accused.

Respondent no.1 challenged the order in the Apex Court by filing Special Leave to Appeal (Criminal) No. 160 of 2000. By the detailed order dtd. 16th February, 2001, the Apex Court dismissed the appeal and confirmed the direction of the Karnataka High Court. In it's order of dismissal of the appeal, the Apex Court observed that “having regard to the facts and circumstances, it is difficult to discern an element of deception in the whole transaction, whereas it is palpably evident that the appellants had an oblique motive of causing harassment to the respondents by seizing the entire articles through magisterial proceedings”.

5 While the Trust was deprived of the use of the Dental Chairs because of the action of the seizure of Chairs, Respondent no.1 presented cheque dtd. 1st May, 2000 bearing No.375346 for payment on 7th May, 2000. On deposit of the cheque, the same was dishonoured for the reason “payment stopped by drawer”. Thereafter respondent no.1 sent a statutory notice and later filed the proceedings under the Negotiable Instruments Act. In it's reply to the statutory notice and as a defence to the proceedings, the applicant and the Trust had contended that in view of seizure of the chairs, the Trust was not liable to pay the rental towards it w.e.f. 10th April, 1999. Despite the situation, respondent no.1 filed the proceedings for the offence punishable under Section 138 Negotiable Instruments Act.

6 None of the abovestated facts are disputed by respondent no.1. Even then the complaint filed does not contain even a whisper about those facts. Respondent no.1 is therefore guilty of clear suppression of material facts in the complaint. In view of the undisputed facts, it is clear that the cheque in question was not towards any debt due to respondent no.1 and as such the proceedings under Section 138 Negotiable Instruments Act were not maintainable. It is patent from the facts of the case that even after the remarks of High Court of Karnataka in it's order dtd. 22nd November, 1999 passed on the Criminal Revision Petition No. 327 of 1999 and in the order of the Apex Court dtd. 16th February, 2001, respondent no.1 continued in it's oblique motive of causing harassment to the Trust and the applicant by filing the proceedings herein. Therefore, the application deserves to be allowed with costs.

7 The application is allowed in terms of prayer clause (a). Respondent no.1 shall pay costs quantified at Rs.50,000/- to the applicant.

(Smt. R.P. SondurBaldota, J.)