IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 661 OF 2017

Raaja Pukhraj Jain ..Petitioner

v/s.

The State of Maharashtra
& Anr. ..Respondents

Mr. Hrishikesh Mundargi i/b. Jitendra Bakliwal for the Petitioner.
Mr.P.H.Gaikwad APP for the Respondent-State.
Mr.Devendra Shinde i/b/Satish Prabhu for the Respondent No.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : NOVEMBER 07, 2017.

P.C.

1. By order dated 10th October, 2017 the parties were put to notice that endeavor would be made to dispose of the petition at the stage of admission.

2. The petitioner herein who is accused no.5 in complaint no. 2974/SS/2012 before the learned Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai has challenged the order of issuance of process under Section 138 r/w. 141 of the Negotiable Instruments Act.

3. Heard Mr. Mundargri, learned Counsel for the petitioner and

Mr. Shinde, learned Counsel for the respondent. Perused the records.

4. The respondent no.2 who was the complainant in Complaint No. 2974/SS/2012 had filed a complaint under Section 138 r/w. 141 of N.I.Act for dishonour of cheque dated 3rd June, 2012 for the sum of Rs.25 lakhs. The said cheque was issued on behalf of the accused no.1 company and the same was signed by the accused no.2 being the Chairman and Managing Director of the accused no.1 Company. The applicant who is arrayed as accused no.5 was sought to be prosecuted as Additional Director of the Accused No.1 Company.

5. The averments in the complaint indicate that in the month of September 2007, the accused no.1 Company through its Additional Director, Accused no.7 had requested the complainant to keep the amount of Rs.25 lakhs as Inter Corporate Deposit (ICD) at the rate of 16.50% p.a. with the Company for a period of 91 days. Accordingly, the Complainant had transferred an amount of Rs.25 lakhs to the accused's bank- United Bank of India through RTGS. The said ICD deposit was renewed from time to time. The cheque which was the subject matter of the complaint was allegedly issued towards the

repayment of the said ICD deposit.

6. The complaint states that the applicant along with the other accused i.e. accused nos.2 to 4, 6 and 7 were looking after the day to day affairs of the Company and were responsible for the affairs of the accused No.1 Company. The subject cheque was issued on 3rd June, 2012. It was dishonoured on 30th August, 2012. By a statutory notice dated 21st September, 2012 the respondent no.2-complainant had brought to the notice of the accused no.1 company and the other accused that the cheque was dishonoured. The said statutory notice also indicates that the applicant herein was called upon to repay the said loan amount as the Addl. Director of the Company.

7. Shri Mundargi, the learned Counsel for the petitioner has drawn my attention to Form 32, a perusal of which clearly indicates that the applicant herein was independent Non-executive Director appointed on 13th February, 2012. He has resigned on 26th September, 2013 which is further evident from Form 32, which is at page 31. The records thus reveal that the applicant herein was not associated with the Company in the month of September, 2011 i.e. on the date of the initial transaction. Furthermore, the applicant was

not an Additional Director, but was an independent Director. In the case of a ***Alok Sharma vs. State of Maharashtra,*** (Writ Petition No. 834 of 2014 to 847 of 2014) this Court (Coram M.LTahaliyani, J.) has held that:

> "If one goes through the definition of Independent Director, it is absolutely clear that the Independent Director is neither a promoter of the company, its holding, subsidiary or associated company. He is not related to promoters or directors of the company. He has no pecuniary relationship with the company. His relatives cannot have pecuniary relationship or transaction with the company. What the court is required to note is that the Independent Director in relation to the company is a director other than Managing Director or whole time Director or nominee director, who in the opinion of Board is a person of experience. integrity and possess relevant expertise and As such, the Independent Directors are appointed to assist the company with their expertise and experience in the field in which the company is working. They obviously cannot be responsible for the company's day to day conduct of business. In view thereof, the prosecution launched against such Directors for the offence punishable under section 138 of the N.I. Act with the help of section 141 of the said Act cannot be sustained."

8. Applying the same principles, in my considered view, the petitioner herein who was appointed as an independent Director and who was otherwise not associated with the Company in any manner cannot be prosecuted for the offences punishable under Section 138 r/w. 141 of Negotiable Instruments Act. Hence the order:

i) The petition is allowed.

ii) The order dated 3rd June, 2013 passed in C.C.No. 2974/SS/2012 by the Metropolitan Magistrate, 28th Court, i/c. of 23rd Court, Espalnade, Mumbai. is quashed qua the petitioner.

(ANUJA PRABHUDESSAI, J.)