

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1174 of 2017

Shiv Art Chain Pvt.Ltd. ...Petitioner
Versus
Hirachand Gulecha and Ors. ...
Respondents

Mr. Kapil A.Rathur for the Petitioner.
Ms. Madhavi Nalluri, i/b Akshay Kamble for the Respondent
No.1
Ms.P.N. Dabholkar, APP for the State.

CORAM: A.M.BADAR,J
DATED: 21st September, 2017

PC:-

1. This is a petition by an accused for challenging the order passed by the learned Metropolitan Magistrate rejecting the application for staying of proceedings in complaint for the offence punishable under Section 138 of the Negotiable Instrument Act as well as the order passed by the Revisional Court confirming the order passed by the learned Metropolitan Magistrate, Mumbai.

2. Heard the learned Advocate for the petitioner/original accused at sufficient length of time. He has submitted that precedence to the prosecution of Criminal Case is not a rule applicable universally and in some cases precedence can be given to Civil Proceedings. He further argued that Respondent No.1/applicant/original complainant has also filed a Summary Suit before this Court, wherein this Court has granted unconditional leave to defend to the matter went up to Supreme Court. The learned Advocate further argued that the cheque in question was issued under the MOU which is challenged in the suit and therefore the learned Trial Court ought to have stayed the proceedings of the Complaint case and in fact the entire record of the Criminal Case ought to have sent to this Court for deciding the Summary Suit.

3. The learned Advocate appearing for the Respondent No.1/original complainant opposed the petition by contending that after recording statement under Section 313 of the Code of Criminal Procedure of the accused i.e. present

petitioner an application for stay came to be moved and therefore, the petition needs to be dismissed.

4. I have carefully considered the rival submission and also perused the material available on record. I have carefully gone through the judgment in the matter of **Bhanu M. Vakil.Vrs..Chandra Oshiram Keswani and Anr. reported in 1991 Cril. L. J 2819,** which is in respect of proceedings under Section 630 of the Companies Act. It is observed therein that the rule that '*ordinarily criminal prosecution ought to be given precedence cannot be said to be of universal application.*

5. Respondent No.2 had filed private complaint against the present petitioner alleging the offence punishable under Section 138 of the Negotiable Instruments Act. The said complaint is registered as Criminal Case No.3229 of 2014 and is pending for the trial before the trial Metropolitan Magistrate, Mumbai. It has reached upto the final stage as statement under Section 313 of the Code of Criminal

Procedure is already recorded. Similarly, it appears that Respondent No.1 has also filed similar suit bearing No.846 of 2013, wherein recovery of amount is sought. Leave to defend this suit is granted to the defendant therein and MOU is under challenge.

6. The question for consideration is whether due to pendency of Summary Suit for recovery of amount, proceeding in complaint for the offence punishable Under section 138 of the Negotiable Instrument Act needs to be stayed? The answer to this question shall be no, because object of this proceedings are totally different.

7. The Civil Suit is for recovery of money under the existing liability, whereas the proceedings for the offence punishable under Section 138 of the Negotiable Instrument Act are for punishing the accused for the offence made punishable under that Section. It has no relevance with Civil

liability. Even otherwise, proceedings under the Negotiable Instrument Act are supposed to be decided in six months..

8. In this view of the matter there is no merit in the petition and therefore, the same is dismissed.

(A.M. BADAR, J.)