IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1224 OF 2017

Metalman Industries Ltd. & Anr. ….Petitioners
Versus
Ushdev International Ltd. & Anr. ….Respondents

WITH
WRIT PETITION NO. 1225 OF 2017

Metalman Industries Ltd. & Anr. ….Petitioners
Versus
Ushdev International Ltd. & Anr. ….Respondents

WITH
WRIT PETITION NO. 1226 OF 2017

Metalman Industries Ltd. & Anr. ….Petitioners
Versus
Ushdev International Ltd. & Anr. ….Respondents

WITH
WRIT PETITION NO. 1227 OF 2017

Metalman Industries Ltd. & Anr. ….Petitioners
Versus
Ushdev International Ltd. & Anr. ….Respondents

Mr. Abad Ponda a/w. Mr. Santosh Avhad i/b. Jayakar & Partners for the petitioners.
Mr. Ashish C. Chavan for respondent no.1.
Mr. S.R. Agarkar, APP for the State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 23rd NOVEMBER, 2017

P.C. :

1. By these petitions, the petitioners herein have challenged the order dated 20th January, 2017 whereby the learned Additional Sessions Judge, Greater Mumbai has dismissed the applications filed by the petitioners herein to permit them to incorporate additional grounds and to produce certain documents in the Criminal Revision Application Nos. 691, 692, 693 and 694 of 2013.

2. Considering the narrow controversy involved, the petitions are disposed of finally at the stage of admission.

3. The brief facts necessary to decide these petitions are as under :-

(i) Respondent no.1 had filed complaints against the petitioners herein for committing offence under Section 138 of the Negotiable Instrument Act. By order dated 16th December, 2011 in Criminal Case Nos. 2912/SS/2011, 2910/SS/2011, 2913/SS/2011 and 2911/SS/2011, the learned Metropolitan Magistrate, 3rd Court, Ballard Pier issued process against the petitioners for offence under Section

138 r/w. section 141 of the Negotiable Instrument Act.

(ii) The petitioners herein challenged the said order in Revision Application Nos. 691, 692, 693 and 694 of 2013 respectively. By application dated 09th November, 2016, the petitioners sought leave to incorporate additional grounds and further to produce some documents in the said revision applications. Upon hearing the respective parties, the learned Additional Sessions Judge, Greater Mumbai, by the impugned order dated 20th January, 2017 dismissed the applications mainly on the ground that the applications do not contain the proposed additional grounds which were sought to be incorporated. The learned Sessions Judge has further held that the petitioners had merely referred to a letter which was sought to be produced as additional document without annexing copy of the said letter or stating the particulars of the said letter. Being aggrieved by the said order, the petitioners have invoked the writ jurisdiction of this Court.

4. Shri. Abad Ponda, learned counsel for the petitioners has submitted that the Sessions Court while exercising revisional powers under Section 397 of Criminal Procedure Code has ample powers to

consider the documents produced by the accused, if the same are necessary for deciding the controversy. In support of this contention, he has relied upon the decision of the Apex Court in ***Harshendra Kumar D. v/s. Rebatilata Koley and Ors. (2011) 3 SCC 351*** and a decision in ***M/s. Sanatan Financers and Real Estate Pvt. Ltd. v/s. Peter Faulkner 2013 SCC Online Bom 768.*** He has further submitted that the document which was sought to be produced is infact a letter dated 10th March, 2011 issued by the Bank which clearly indicates that the accounts of the petitioners were frozen with effect from 27th January, 2011. This document was material and essential to decide the controversy between the parties.

5. Before adverting to the facts of the case, it would be relevant to refer to paragraphs 24 and 25 in the case of ***Harshendra Kumar D. v/s. Rebatilata Koley and Ors. (2011) 3 SCC 351*** which read thus :-

> *" 24. In Awadh Kishore Gupta, this Court while dealing with the scope of power under Section 482 of the Code observed (SCC p. 701, para 13) :*
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> *"13. It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482*

of the Code, it is not permissible for the Court to act as if it was a trial Judge."

25. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents - which are beyond suspicion or doubt - placed by accused, the accusations against him cannot stand, it would be travesty of justice if accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage. "

6. A Single Judge of this Court (Coram : R.C. Chavan, J.) ***in M/s. Sanatan Financers and Real Estate Pvt. Ltd. v/s. Peter Faulkner 2013 SCC Online Bom 768*** in Criminal Writ Petition No. 87 of 2011, after considering the decision of the Apex Court in ***Harshendra Kumar D*** supra has held thus :-

" 4......The Court observed that the applicants were free to produce the documents before the trial Court where they had

already appeared. The learned Counsel for the petitioners is right in pointing out that the Hon'ble Supreme Court in Harshendra Kumar D. V/s. Rebatilata Koley Etc. reported at 2011 (3) SCC 351 has already considered the question of documents produced from the office of the Registrar of Companies. In that case, the question was whether the person signing as the Director of the Company was the Director of the Company at the relevant time and it was shown that he was not the Director at the relevant time as he had resigned. The Court had observed that in the criminal case where trial was yet to take place and the matter was at the stage of issuance of summons for taking cognizance, materials relied upon by the accused, which are beyond suspicion or doubt, could be looked into by the High Court in exercise of jurisdiction under Section 482, or, for that matter, even in exercise of revisional jurisdiction under ***section 397 of the code.*** *Since the Sessions Judge exercises revisional jurisdiction along with the High Court the Sessions Judge could have also looked into these documents. In view of the documents which were produced by the petitioners before the Sessions Judge, he ought to have quashed and set aside the process issued by the learned JMFC, Quepem. "*

7. Similarly, in ***Ajay Krishnakant Parikh & Anr. v/s. Anand Jayant Darve and Anr.,*** a Single Judge of this Court (Coram : Abhay M. Thipsay, J.) in Criminal Application No. 344 of 2012 by order dated 01st August, 2012, has held thus :-

" 17. The authoritative pronouncements of the Supreme Court of India on which reliance has been placed by Mr.Naik, only lay down that it would be permissible for this Court to look into the materials produced by the accused which are in the nature of public documents, or which are beyond doubt or suspicion, while exercising inherent jurisdiction, or sometimes even in revision proceedings. Their Lordships have laid down the Law by making it clear that there would be no absolute prohibition on looking at materials or documents produced or relied upon by an accused,

and that in appropriate cases, if on the face of documents - which are beyond suspicion or doubt - relied upon by the accused, the accusation cannot stand, the accused may not be required to face the trial and the Court would be justified in quashing the 9/9 APL 344.12 prosecution in such cases. The propositions laid down by Their Lordships of the Supreme Court of India cannot be stretched to mean that even where the documents or materials produced by the accused are disputed, the Court should undertake a fact-finding exercise in the proceedings under section 482 or section 397 of the Code of Criminal Procedure and decide whether what the accused says is true. "

8. It is thus well settled that while exercising jurisdiction under section 482 or 397 of Criminal Procedure Code, the Court cannot look into the defence of the accused. However, in appropriate cases, the court can consider the documents produced by the accused, provided the documents are public documents, are beyond suspicion or doubt or are of sterling quality.

9. Though Mr. Ashish Chavan, the learned counsel for the respondent had initially contended that the Sessions Court, in exercise of revisional jurisdiction is not competent to look into the documents produced by the accused, in the light of the decision of the Apex Court and of this court, he concedes that there is no total embargo on considering the documents produced by the accused. He, however, contends that the document sought to be produced by the petitioners is

neither a public document nor a document beyond suspicion or doubt. Hence the same cannot be looked into at this stage.

10. It may be mentioned that the accused had filed an application for amendment without specifying the grounds which were sought to be incorporated by way of an amendment. Though the applicant had sought leave to produce additional documents and had referred to a letter from the bank, the applicant had not annexed copy of the said letter to the application. The learned Judge therefore had no opportunity to peruse the said document and decide about the authenticity or the genuineness of the document. Be that as it may, the petitioners have produced the said letter before this Court. The said letter is neither a public document nor an admitted document. Furthermore, the letter sought to be produced only states that the Account No.001102000004305 stands frozen w.e.f. 27th January, 2011 and that no withdrawal is permitted to be done by the account holder in the said account. Needless to state that this letter would not *per se* absolve the applicant from any criminal liability / alleged offence. The said document, therefore, does not meet the requirements in

Harshendra Kumar D (supra). The said document, cannot be considered at pre-trial stage.

11. Under the circumstances and in view of discussion supra, the petitions are dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)