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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2031 OF 2016

Mr. Ranjit Narote ... Petitioner
vs.
The State of Maharashtra & Anr. ... Respondents

Mr. Ankush Dhokale for the Petitioner.
Mr. Kishor Bhatia for Respondent no. 2
Ms. M. R. Tidke, APP for the State.

CORAM : A. K. MENON, J.
DATE : 13th JULY, 2017

P.C.:

1. By this Writ Petition the petitioner seeks to challenge order issuing process in respect of complaint under section 138 of the Negotiable Instrument Act. Admittedly, the complaint is of the year 2011. However, it is the case of the petitioner that he has nothing to do with the issuance of cheque. Learned Counsel for the applicant states that the cheque is issued on behalf of one M/s.E-DMS Enterprises by one Mr. Pramod Kumar Mishra who was original accused no.1 but he has expired.

2. According to the learned Counsel for the petitioner, the said M/S. E-DMS Enterprises was proprietary concern of late Mr. Pramod Kumar Mishra and the the present petitioner has nothing to do with said business. According to him the

complainant has incorrectly impleaded him as accused no.3 in the original complaint. The petitioner has enclosed those with a copy of the complaint in Case no. 385/SS/2011 along with it is annexed letter dated 28th May, 2011 issued by Bank of India to M/s.E-DMS Enterprises setting out the fact that current account mentioned therein refer to that of partnership firm wherein there were four partners. The first partner being original complainant and 4th complainant being Mr. Pramod Kumar Mishra.

3. According to the learned Counsel for the applicant Mr. Pramod Kumar Mishra has signed the cheque in question as proprietor. Learned Counsel for the petitioner relied upon judgment of the Supreme Court in ***P. J. Agro Tech. Ltd. & Ors. v. Water Base Ltd [AIR 2010 SCC 2956]*** and submitted that only the drawer of the cheque is responsible under the Act and since petitioner has not signed the cheque and he is not a partner there is no liability whatsoever and hence order issuing process is not sustainable. On a query from the Court as to how these two contrary contentions are sustainable, the learned Advocate for the petitioner states that account referred to in letter dated 28th May, 2011 is different from account from which the cheque was issued. Prima facie the name of the business M/s. E-DMS Enterprises appears to be the same.

4. Furthermore, it is the contention of the learned Advocate for the petitioner that statutory notice has not been received, but as rightly pointed out from the petition at Exhibit – G (colly) attached to the complaint contains an

acknowledgement card of the postal department wherein the signature of the petitioner appears in acknowledgment of the registered letter on 9th May, 2011. It is not in dispute that the signature appearing on the said acknowledgement card is that of the petitioner. Learned Advocate for the petitioner is unaware whether this letter was in fact received. Copy of the statutory notice appears at Exhibit- G of the complaint. Notice is seen addressed to the petitioner herein who is shown as respondent no.3. The Statutory notice clearly mentions that the present petitioner was partner of the said firm. The fact that the demand notice has not been replied to has not been disputed.

5. In view of the fact that the petitioners acknowledgment card is not being disputed no case made out in this petition for interference in Writ Jurisdiction. Further more, the delay in approaching this Court i.e. 6 years after process is issued will not justify interference with the impugned order in jurisdiction of this Court.

6. Accordingly, I pass the following order :

(i) Petition is dismissed.

(A. K. MENON, J.)