IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 874 OF 2016

Appasaheb Nalawade Gadhinglaj Taluka
Sahakari Sakhar Karkhana Ltd. &Ors... Applicants
Vs.
State Bank of India, Gadhinglaj Branch
&Anr. … Respondents

Mr.Shrinivas S. Patwardhan,Advocate for the applicants
Mr. Prashant D. Patil, for resopndent No.1.
Mr.V.V.Gangurde,APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 4th May, 2017.

P.C.

The applicants herein are Directors of applicant No.1 i.e. Appasaheb Nalawade Gadhinglaj Taluka Sahakari Sakhar Karkhana Ltd. Being aggrieved by the order of issuance of process under Section 138 of the Negotiable Instruments Act filed by the respondent, the petitioners have approached this Court seeking quashing of the complaint on various grounds which are without prejudice to one another.

2. State Bank of India filed a complaint in the Court of Judicial Magistrate, First Class, Gadhinglaj against the present applicants alleging therein that the applicants are the guarantors to the loan obtained by the harvesters' society. That the applicants had furnished default guarantee

bonds. That the complainant Bank had sanctioned and disbursed loan of Rs.8.95 crore. After the harvesting season of 2011-12, the Bank had demand the repayment of the loan. Therefore, the Bank was constrained to present two cheques, one cheque for Rs.8.95 crore and another for Rs.2 crore for encashment issued by the applicant Nos. 2 and 4 on 12.6.2014. The cheques were dishonoured. Hence, the complainant was constrained to issue a statutory notice on 5.7.2014. That the notices were returned with an endorsement “Not claimed”. Therefore, the applicants had filed the complaint under Section 138 of the Negotiable Instruments Act.

3. The learned counsel for the applicants vehemently submits that in fact the complainant – Bank had obtained a recovery certificate from the Debts Recovery Tribunal, Pune and that they could execute the said decree and therefore lodging of this complaint and proceeding with the same would be an abuse of process of law. It is also submitted that the applicant No.4 had resigned on the date when the cheques were presented for encashment. It is further submitted that on the face of the complaint, it deserves to be quashed.

4. Upon perusal of the impugned order of issue of process, it is seen that the learned Magistrate had applied his mind to the facts of the case and to the allegations in the complaint. The learned Magistrate has rightly

held that although initially the complainant has used the word `security'. It clearly mentions that the cheques were for payment of the legally enforceable debt and liability.

5. The learned counsel for the respondent submits that the Board had passed a resolution that they are liable to pay the said amount to the complainant-Bank and that recovery of the amount is not the sole issue. That the applicants have committed an offence punishable under Section 138 of the Negotiable Instruments Act. It is also submitted by the learned counsel for the respondent that the applicants herein had not filed their reply to the statutory notice and, therefore, the complainant was constrained to file the complaint.

6. Be that as it may, the order of issuance of process does not warrant any interference. In fact, there is a rebuttable presumption at the time of trial. Under Section 139 of N.I. Act, there is a statutory mandate that a presumption is to be drawn that the cheques are issued towards a legally enforceable debt.

7. The learned counsel for the petitioners also vehemently submits that the Bank is armed with a decree which covers the entire amount which was mentioned in the disputed cheques. The learned Magistrate shall take into consideration this aspect at the time of recording

of evidence and at the stage of final hearing also. That it is a matter of record and undisputed by the learned counsel for the respondent that the complainant is armed with a decree and that execution is in process. In the eventuality that the decree is satisfied, the learned Magistrate shall consider the same at the time of final hearing.

8. With these observations, the Petition stands disposed of. Rule is discharged. The learned Magistrate is hereby directed to conclude the proceedings within a span of six months from the date of receipt of this order. The learned Magistrate shall also consider the exemption applications filed by the applicants and shall not insist upon their presence in the eventuality that they make an application that the plea be recorded through their Advocate. Needless to say that the interim relief stands vacated.

(SMT. SADHANA S.JADHAV, J.)