IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3966 OF 2016

Shri. Dhairyashil Rajsinh Mohite-Patil & ors. … Petitioners

vs.

The State of Maharashtra & ors. … Respondents

Mr. Vineet Naik, Senior Advcoate a/w Mr. Sukand R. Kulkarni, Advocate for the petitioners.
Mr. M. V. Gangurde, A.P.P. for the State/respondent no.1.
Mr. P. K. Dhakephalkar, Senior Advocate a/w Mr. Umesh R. Mankapure, Mr. vinod Sangvikar, Advocate for respondent no.2.

Coram : Smt. R. P. SondurBaldota, J.
Date : 22nd February, 2017

P.C. :

1. This petition is filed under Section 482 Criminal Procedure Code to challenge the order of issuance of process for the offence punishable under Section 138 of Negotiable Instruments Act on the complaint filed by respondent no.2. The petitioners are original accused nos.2 to 8 respectively. Original accused no.1 is Company, of which petitioners no.1 to 6 are the Directors. Petitioner no.7 is the General Manager of accused no.1. Mr. Naik, the learned Senior Advocate for the petitioners states that petitioner no.1 being the Managing Director of the company on behalf of which the cheque was issued and petitioner no.6 being the signatory of the cheque, he does not press the petition on their behalf. As regards the remaining petitioners i.e. petitioners no.2 to 5 and 7, it is contended that the averments in the complaint made against them fall short of requirement of Section 141 of the Negotiable Instruments Act. The Additional ground allegedly available to petitioners no.2 and 4 is of their resignation as Directors of accused no.1 company. Petitioner no.2 claims to have resigned as Director of accused no.1 on 6th February, 2014 and petitioner no.3 claims to have resigned on 10th May, 2016.

2. The brief statement of facts leading to the petition are as under :

Respondent no.2 is a Co-operative Sugar Factory duly registered under the Maharashtra Co-operative Societies Act, 1960. It manufactures sugar and other allied products. Original accused no.1 also carries on activities as a Sugar Factory. During the crushing season of 2014-2015 original accused no.1 had by it's letter dated 25th February, 2015 requested respondent no.2 to supply excess sugarcane of it's members for crushing. Accordingly an agreement was executed between accused no.1 and respondent no.2 on 26th February, 2015, which was signed by petitioner no.1 and petitioner no.7 on behalf of accused no.1 Company. By that agreement accused no.1 and all the petitioners specifically agreed to make payments of sugarcane bills including the transportation charges and other charges as per the Government Resolution within 15 days from crushing of sugarcane. Accordingly the petitioners issued four cheques drawn on Indian Overseas Bank duly signed by petitioner no.7 with the seal of accused no.1 Company for the aggregate amount of Rs.5,94,73,762/-. The cheques when presented for payment on 20th May, 2016 returned with a memo “Contact the Drawer and present again” on 26th may, 2016. Accordingly, respondent no.2 sent letter dtd. 27th May, 2016 to accused no.1 drawing it's attention to the fact when all the petitioners promised that the cheques would be honoured when presented again. However, the cheques came to be dishonoured for the reason “insufficient funds” on 1st June, 2016. Respondent no.2 then issued the notice of demand dated 16th June, 2016.

3. The petitioners along with accused no.1 replied the notice by it's letter dated 2nd July, 2016 making a claim that they had made the entire dues of Rs.11,70,24,170/- as per the agreement. However, the farmers of respondent no.2 factory had initiated proceedings before the Commissioner of Sugar, Pune alleging non-payment. According to them at the relevant time no factory-wise FRP was fixed and the Commissioner of Sugar, Pune on 28th August, 2015 had directed accused no.1 to pay an amount of Rs.9,23,52,049/-. This order has been challenged by accused no.1 by filing Writ Petition No. 9001 of 2015 which is pending for consideration. In these circumstances, according to the petitioners and accused no.1 there was no liability to pay sum of Rs.5,94,73,762/- to respondent no.2. They further contended that the four cheques given to respondent no.1 were blank cheques with a clear understanding that the same would not be deposited without specifically intimating the petitioners and without specific instructions from the petitioners.

4. Respondent no.2 contends in it's complaint that condition no.3 of the agreement between the parties clearly mentions that accused no.1 will make payment by way of advance to sugarcane suppliers who were members of respondent no.2 at the rate of crushing season 2014-2015 given by respondent no.2. Further they will make payment of final bill at the rate of Rs.75/- per ton less than the rate of final bill of respondent no.2. As the members of respondent no.2 had supplied total sugarcane of 78,21.961 Metric Ton to accused no.1. It was necessary for accused no.1 to make payment to the suppliers at the rate of Rs.1,997/- per ton totalling to Rs.15,58,01,107/-. Out of that accused no.1 had deposited a sum of Rs.30,00,000/- with respondent no.2, which was adjusted by it towards the harvesting, transportation charges as also the commission. Thus after such adjustment, the total amount of Rs.1,36,79,914/- was due from accused no.1. As per the Government directions respondent no.2 is entitled to charge interest at the rate of 18% p.a. on the amount from the due date till actual payment. Respondent no.2 claims that cheques issued by accused no.1 are towards the balance amount payable along with the interest thereon.

5. Mr. Naik, the learned Senior Advocate for the petitioners submits that the averments made in the complaint are not sufficient to attract the vicarious liability under Section 141 of the Negotiable Instruments Act. For that purpose, it was necessary that the complainant avers and proves as to how and in what manner the petitioners were responsible for the conduct of the business of the company and in what capacity they were in charge of day to day functioning of the company at the time the cheques were issued. According to him, the allegations made in the complaint in support of the vicarious liability are bald and cursory statements and hence respondent no.2 has not fulfilled the prerequisite contemplated by the Negotiable Instruments Act.

6. Perusal of the complaint, a copy of which is annexed to the petition indicates otherwise. Para 1 of the complaint describes the status of the petitioners qua accused no.1 company. Para 3 thereof specifically states that all the petitioners had promised respondent no.2 that the payment for sugarcane supplied would be made within the specified time limit and that the cheque issued would be honoured when presented for payment. The averments made at paras 3, 7 and 8, specifically state that all the petitioners were in charge of the affairs of the company when the offence was committed and were responsible for the conduct of business of accused no.1 Company. Further at para 13 there is reiteration of the role played by the petitioners in the transaction. Therefore, on a, prima facie, view of the matter, it cannot be said that the mandate of Section 141 of Negotiable Instruments Act is not satisfied by the averments made in the complaint. The averments as made would be sufficient to proceed against the petitioners.

7. The second argument of Mr. Naik is of resignation of petitioners no.2 and 4 as the directors of accused no.1 Company. The reply sent by the petitioners to the demand notice of respondent no.2 does not refer to the resignation of the two petitioners. Therefore this aspect will have to be relegated to the trial for it's consideration. Hence, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]