IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1478 OF 2016
WITH
CRIMINAL APPLICATION NO. 1479 OF 2016
WITH
CRIMINAL APPLICATION NO. 1480 OF 2016

Mukund Karwa .. Applicant
Vs.
State of Maharashtra & Anr. .. Respondents

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Mr.Ishan S. Jani, Advocate for the Applicant.

Mr.Shoaib Memon a/w. Ms.Dipika Bathija and Ms.Dimple Majithia i/b. M/s.Agrud Partners, Advocate for Respondent No.2.

Mr.N.B. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 7, 2017.

P.C. :

The applicant in all these application have invoked inherent jurisdiction of this Court under Section 482 of Cr.P.C. applicant is an accused in the complaint which are subject matter of the aforesaid applications. Respondent no.2 has filed the complaints for offence punishable under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as “N.I. Act”, for short). In all the complains, process has been issued by the Magistrate for offence punishable under Section 138 of the N.I. Act.

2 The case of the complainant in all complaints which are subject matter of challenge in this applications is that accused no.1 is the a company incorporated under the provisions of the Companies Act, 1946. Accused no.2 is the whole time director for accused no.1, accused no.3 is the managing director of accused no.1 and is the signatory to the sub-license agreement dated 13th April, 2002 and its dishonoured cheques on behalf of accused no.1. Accused no.4 is the director of accused no.1 and the said accused nos.2 to 4 are in charge of and responsible for the conduct and the day to day administration of the business affairs of the accused no.1 at all relevant times and the offence committed was within their knowledge and consent. The case of the complainant is that in all these complaints for payment of dues of the cheques were issued. As far as complaint which is the subject matter of criminal application no.1478 of 2016, two cheques were issued in the sum of Rs.1,00,00,000/-. In the complaint which is subject matter of criminal application no.1479 of 2016 three cheques for total amount of Rs.4,00,00,000/- were issued and in the complaint which is subject matter of criminal

application no.1480 of 2016, three cheques totally amounting to Rs.6,59,00,000/- were issued. All these cheques were dishonorned. Notice was issued by the complainant in pursuant to the dishonour of the cheques, the applicant has submitted his reply to the said notice. Thereafter, complaint was filed and after recording verification statement process was issued.

3 Learned counsel for the applicant submitted that it is an abuse of process of law to prosecute the applicant in all these complaints. The accused no.1 company was operated, managed andcontrolled by J.P. Karwa Group and S.P. Karwa group. The members of both group are related to each other. The applicants belongs to S.P. Karwa Groups. The members of J.P. Karwa Group were in control and management of said company and the members of S.P. Karwa Gropu were not permitted to exercise any control. The opposite group committed acts of oppression and mismanagement in the affairs of said company. They also siphoned and misappropriated funds of the company. He relied upon the proceedings which are pending before the Company Law Board. Copy of the order passed by the Company Law Board dated 25th April, 2014 has been annexed to applications. Reliance is placed on paragraphs 19, 25 and 26 of the said order. It is

submitted that the company Law Board was pleased to arrive at conclusion that the members of S.P. Karwa Group including the applicant who were petitioners in the company petition had made out case for grant of interim relief. It is submitted in paragraph no.19 of the order, reference is made to the contention that on or about 18th March, 2014, applicant received two statutory notices dated 11th March, 2014 under Section 138 read with Section 141 of the N.I. Act. It is further stated that it is only after receipt of the said noticed by the applicant, that he learnt that two cheques for an amount of Rs.50,00,000/- each both dated 30th November, 2013 were drawn on State Bank of India. The notices in respect to said two cheques were issued on account of dishonour of cheque on the ground of “Insufficiency of Funds”. It was further submitted that petitioner no.1 though on the Board of Directors, was never apprised/informed of the transaction with respondent no.2 in respect of which the said two cheques were dishonoured. It was also contended that the petitioners therein due to their inaccessibility to accounts and other financial information of the company are completely oblivious to the financial position and stability of the company. In paragraph 25 of the said order it is observed that the property sought to be sold by the respondents therein was worth Rs.100 crores and above. It is not in dispute that in the terms of clause of the MOU, the respondents were under obligation to give monthly update to the Petitioners in respect of the sale of the said property which they admittedly failed to discharge and no monthly updates were given to the petitioners therein although the agreements for sale of few plots have been entered into by the respondents with the prospective buyers. On the basis of the said observations made in the said order, it is submitted by the counsel for the applicant that there was mismanagement in the affairs of the accused no.1 company by opposite group and the applicant and other similarly placed persons were not participating to the day to day affairs of the company. In paragraph 26, it is observed that the respondent group who is in majority has to take all decisions alone in respect of sale of assets of company. Therefore, the apprehensions expressed by petitioner group as to the oppression and mismanagement due to possible arbitrary decisions in the sale of the properties by respondent group cannot be said without any basis, particularly looking into their past conduct in relation to tempering of audit report prepared by M/s. Ernst & Young. He, therefore, strongly relied upon the said order. It is submitted that this order of Company Law Board is an unimpeachable document. Thus, the applicant was not in control of business of accused no.1

company. He relied upon the decision of the Apex Court in the case of ***Gunmala Sales Private Ltd. Vs. Anu Mehta & Ors.***[1] Reliance is placed on paragraph no.34.3 of the said decision and it is submitted that the order passed by the Company Law Board can be relied upon by the applicant for quashing the proceedings in the light of the observations made in the aforesaid decision. It is submitted that the applicant had forwarded its reply to the complainant stating that he had no control over the affairs of the company and was not involved in any transaction. Inspite of the said reply being forwarded to the complainant he was impleaded as an accused in the said complaint. It is further submitted that although, it is mentioned that the applicant at all relevant time was incharge and responsible for the conduct and the day to day administration of the business affairs of accused no.1 and the offence committed was within his knowledge and consent, in view of the order of the Company Law Board, the applicant be exonerated and taking into consideration the fact that the proceedings are still pending before the Company Law Board, the present proceedings deserves to be quashed and set aside.

4 Learned counsel for respondent no.2 submits that the complaint clearly makes out the commission of offence under

1 (2015) 1 SCC (Cri) 580

Section 138 of N.I. Act. It is submitted that the learned Magistrate has perused the complaint, recorded the verification statement and has come to the *prima facie* conclusion that the process is required to be issued against the accused and, therefore, the order issuing process has been passed. The complaint clearly attributes the role to the applicant for which the issuance of process is justified. It is further submitted that the submissions advanced by the learned counsel for the applicant can at the most be agitated during the trial as the same amounts to his defence. It is submitted that the order passed by the Company Law Board which has been relied upon by the applicant does not state that the applicant is not concerned with the issuance of the cheques which are subject matter of this complaint. He relied upon the latest decision of the Apex Court in the case of ***Standard Chartered Bank Vs. State of Maharashtra & Ors.***[2]. It is, therefore, submitted that there is no substance in the arguments advanced by the counsel for the applicant and the application may be dismissed.

5 I have perused the complaint and all documents which are annexed to the application. It is pertinent to note that

2 2016(Cr.LJ.) 2362

the complaint categorically attribute the role played by the applicant and has clearly stated that the applicant was incharge and responsible for the conduct and day to day administration of the business of accused no.1 at all relevant time. The offence committed was within their knowledge and consent. The submission of the learned counsel for the applicant is that although there is averments in the complaint, relying upon the order of the Company Law Board, the proceedings against the applicant may be quashed. I have perused the order passed by the Company Law Board. It cannot be said that the applicant can be absolved from the liability in respect to the issuance of the cheques which are dishonoured. The complainant is not concerned with the internal disputes between two groups in the company. The learned Magistrate has issued process after coming to the conclusion *prima facie* that the applicant can be prosecuted for the offence punishable under Section 138 of N.I. Act. I have also perused the reply filed by respondent no.2 in which it is stated that in respect to two other complaints, the cheques issued by same company were signed by the applicant and the said complaints are pending in the Court. Copies of the said complaints are annexed to the reply. Learned counsel for the applicant deny that he is a signatory to those cheques. In any case, the averments which made in the said complaints, it is stated that the applicant is the signatory of those cheques. It cannot be said that the applicant can be absolved from, as stated in the complaints which are under challenge. The document in the form of the order passed by the Company Law Board is not sufficient to quash the proceedings against the applicant. The said document at the most cannot be relied upon during the trial, as a defence of the applicant. No case is made out to invoke power under Section 482 of Cr.P.C. to quash the proceedings under challenge. In view of the above all applications are liable to be rejected.

6 Hence, I pass the following order:

:: O R D E R ::

(i) Criminal Application Nos.1478, 1479 and 1480 of 2016 are rejected;

(ii) Interim order stands vacated.

(PRAKASH D. NAIK, J.)