IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO. 430 OF 2016

1. Mukesh Deodutta Gupta,
Aged Major, Occ: Business,
R/o. Gupta Bhavan, House No.28,
Central Park Road, Dhantoli,
Nagpur.

2. Sou. Seema w/o Mukesh Gupta,
Aged Major, Occ: Business,
R/o. Gupta Bhavan, House No.28,
Central Park Road, Dhantoli,
Nagpur. ..APPLICANTS

VERSUS

HDFC Bank Ltd., Nagpur, Department
for Special Operation, Trade
Word, C. Wing, 12th Floor,
Kamla Mills Compound, S.B. Marg,
Lower Parel, Mumbai-p400013,
having its Principal Office at
HDFC Bank, House No. C.S. No.6/242,
Senapati Bapat Marg, Lower Parel,
Mumbai-400013 Through its
authorized officer Akbar Panjwani. ..RESPONDENT

Mr Hemant Chandurkar, Advocate for applicants;
Mr S.D. Ingole, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 23rd MARCH, 2017

ORAL ORDER :

By renewal sanction letter dated 1st January, 2009 in favour of the applicants-accused, the respondent-bank extended certain facilities viz. Cash credit, letter of credit etc. It appears that the applicants issued cheque of Rs.2 crores, which came to be dishonoured, resulting into filing of complaint case No.12457 of 2014 against the applicants before learned 28th Judicial Magistrate, First Class, Special Court, Nagpur. Learned Magistrate issued process for offence punishable under Section 138 of the Negotiable Instruments Act against the applicants, which order was questioned before the learned Additional Sessions Judge-8 Nagpur. Learned Additional Sessions Judge, by impugned order dated 25th April, 2016 dismissed the claim for quashing the order of issuance of process. As such, present proceedings questioning the said order.

2. Mr. Chandurkar, learned Counsel for the applicants-accused while inviting attention of this Court to the Condition No. 1 in renewal sanction letter dated 1st January, 2009 submit that security of post dated cheque of Rs.2 crores was called and accordingly, disputed cheque, which is form to be

basis for initiation of proceedings under Section 138 of the Negotiable Instruments Act came to be issued is without any date. He would then submit that account of present applicants was sealed by the Income Tax Department prior to initiation of the proceedings under Section 138 of the Negotiable Instruments Act and while replying to the notice under Section 138 of the Negotiable Instruments Act, the said fact was brought to the notice of the respondent-bank. According to him, there was no occasion for respondent to receive/accept such cheque, once the account is already sealed by the Income Tax Department. In addition, according to him, since it could be inferred from the documents of respondent-bank that cheque was issued towards security for repayment of loan amount, provisions of Section 138 of the Negotiable Instruments Act cannot be taken recourse to against the applicants. He would draw support from the judgments of the Apex Court in the matters of ***Vinita S. Rao vs. Essen Corporate Services Private Limited and another***, reported in ***2015 (1) SCC 527*** and ***M.S. Narayan Menon alias Mani vs. State of Kerala and***

another, reported in ***2006 (5) Mh.L.J. 676.*** He would also invite attention of this Court to certain pleadings in the complaint so as to demonstrate that cheque in question was towards security and not towards discharge of liability of the loan.

3. Per contra, Mr. Ingole, learned Counsel for the respondent-bank prayed for rejection of the present application on the ground that once it is admitted on record that there was loan transaction between the applicants and respondent-complainant and if complainant has come out with a case that cheque of Rs.2 crores was issued towards discharge of liability, in absence of evidence to the contrary, learned Court below has rightly issued process. According to him, present application lacks merit and be dismissed.

4. From the record what could be gathered is, respondent-bank has come out with a case that cheque in question was issued towards discharge of financial liability of the respondent in the

proceedings initiated for the recovery before the competent authority. Dishonour of cheaque is found to be basis for initiation of prosecution in question. It is not the case of respondent-bank that the cheque was issued towards security of the loan at the relevant time when benefits were conferred on the applicant by virtue of renewal sanction letter dated 1st January, 2009. In view thereof, it is really difficult to appreciate at this stage that cheque in question was issued towards security of the loan amount, that too in the form of post dated cheque as is sought to be canvassed by learned Counsel for the applicants. Though he has placed reliance upon the judgments of the Apex Court in the matters of ***Vinita S. Rao*** and ***M.S. Narayana Menon***, cited supra, perusal said judgments depict that the Apex Court considered the controversy therein after parties thereto had brought complete oral and documentary evidence before the Court.

5. In the present case, the proceedings under Section 138 of the Negotiable Instruments Act are

at its initial stage and the Court is yet to record evidence therein so as to infer the defence of the applicants-accused.

6. Apart from above, it is required to be noted that the stand taken by the present respondent qua in the complaint case and defence of the applicants-accused cannot be appreciated at this stage of proceedings so as to infer that the cheque was issued towards security of the loan transaction as said fact is disputed by the respondent-complainant.

7. In my opinion, no case for interference in the order of issuance of process is made out. As such, criminal application fails and stands rejected.

(N.W. SAMBRE, J.)

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