IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 367 OF 2018

M/s. Kadakia Plastic & Chemicals Pvt. and others .....Petitioners

V/s.

M/s. Sanjay Chemicals (India) Pvt. Ltd. and another ....Respondents

Mr. Amit Ghag for the petitioners.
Mrs. S. S. Kaushik APP for the State.

CORAM : NITIN W. SAMBRE, J.

DATE : MARCH 5, 2018.

P.C.

This petition is by accused persons on a complaint initiated under the provisions of Negotiable Instruments Act, 1881 by respondents.

2 Petitioners pursuant to the process order by the learned Metropolitan Magistrate, 70th Court, Mazgaon, Mumbai passed on

31/01/2017 preferred Criminal Revision Application no. 281 of 2017 before the learned Sessions Judge, Greater Mumbai. It is came to be dismissed on 15/12/2017. As such, this petition.

3 Respondent/complainant claimed in the complaint that a cheque for an amount of Rs. 8,20,713/- was returned by the bank with a remark "**Exceed Arrangement"** and as such offence is committed.

4 The learned counsel for the petitioners/accused would urge that the issue involved rest on initiation of proceedings against the incorrect parties. According to him the cheque was issued by a proprietary concerned Kadakia Plastics & Chemicals whereas the proceedings are initiated against the company Kadakia Plastics and Chemicals Private Limited and its directors. He submits that the complaint is misdirected and not maintainable. He would then urge that no notice was issued to proprietary concern which has issued the cheque. The issue thereof for non compliance of the requirement under section 138 and 141 of the Negotiable Instruments Act, the

order of issuance of process is required to be quashed and set aside. So as to substantiate his contention, accused parties are not signatories to the cheque and they cannot be termed as drawer of the cheque, reliance is placed on the Judgment of the Apex Court in the matter of **Aparna A. Shah V/s. Sheth Developers Private Limited and another [(2013) 8 Supreme Court Cases 71]**. The learned counsel then would urge that Revisional Court has failed to appreciate these issues and in view thereof order of issuance of process and the proceedings are liable to be quashed and set aside.

5 If the contentions of the petitioners/accused are appreciated in the light of the documents which are produced on record, it is required to be noted that the complainant entered into a transaction with the accused company as is reflected from the tax invoice dated 02/07/2016 thereby supplying PVC Resins for the cheque amount. The order was placed also by the applicant/accused company and notice under section 138 and 141 of Negotiable Instruments Act was served on accused and its directors. Apart from above, it is noted that though in reply to the statutory notice the difference in the

nomenclature and identity of the firm was mentioned, however, the fact remains that the complainant has not clarified as to whether both firms are owned by the same directors.

6 *Prima facie* what is gathered from the record is, two firms-one company and another proprietary concern is managed by the petitioner, and towards transaction of the accused company, the proprietary concern has issued the cheque. From the nomenclature of both, it can be *prima facie* inferred that they belong to same persons.

7 In the aforesaid background, whether appellant/accused are liable for the amount as reflected in the cheque and whether they have committed an offence as alleged in the complaint cannot be appreciated from their pleadings in the revision and the present writ petition. The defence that is sought to be raised by the petitioner can be appreciated at the stage of trial.

8 Apart from above, the observations made by the Apex Court in

the matter of **Aparna A. Shah** [*cited supra*] cannot be made applicable to the facts of the present case looking to the conduct of the accused persons.

9 In this background, no case for interference is made out. Petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]