

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION No. 354 OF 2017

**WITH
CRIMINAL APPLICATION No. 355 OF 2017**

Rupesh Shankaran Vishwanathan

...Applicant

Vs.

State of Maharashtra and Anr.

...Respondents

Mr. Mihir Gheewala i/b. Ishan Jani for Applicant

Mr. H.J. Dedhiya -APP for the State

Mr. Vivek Patil i/b. Vivek Patil and Associates for Respondent No.2

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 22, 2018

P.C.

1. Since the issue involved in these two applications is common, the same is disposed of by this common order. For the purpose of deciding the issue, the facts of the Criminal Application No. 354 of 2017 are considered.

2. The Applicant was arraigned as an accused in criminal case being C.C. No. 1278/SS/2012 initiated by Respondent No.2 before the Learned Metropolitan Magistrate, 28th Court at Esplanade, Mumbai for the punishable under section 138, 141 and 142 of the Negotiable Instruments Act. In the said

complaint, an order of issuance of process was passed by the Learned Magistrate on August 8, 2012/

2. Against the order of issuance of process passed on August 8, 2012, a revision is preferred by the present Applicant being Criminal Revision Application No. 1113 of 2016 before the Court of Sessions for Greater Mumbai, which came to be dismissed on February 17, 2017, as such the applications questioning objection to this order.

3. The learned counsel for the Applicant would strenuously invite attention of this Court to the Form of 32 which is produced on record from the page 18 onwards so as to demonstrate that on October 1, 2011 he was the Managing Director of the Accused Company. According to him, he has resigned from the post as Managing Direction of the Company on 1st of January, 2012. The cheque in question, even if issued in November, 2011 and same was dishonored in 2012, no criminal liability could be fastened on the Applicant. So as to substantiate his contention, he would invite attention of this Court to the Form 31 and the resignation tendered on 14th February, 2012. In addition, he would also invite attention of this Court to the certain document, which according to him, were tendered before the Bombay Stock Exchange so as to demonstrate that he cannot be implicated as an accused in an complaint for the offence

punishable under section 138 and 141 of the Negotiable Instruments Act. The learned counsel for the Applicant would place reliance upon the judgment of the Apex Court in the matter of **Pooja Ravinder Devidasani vs. State of Maharashtra report in 2015 ALL MR (Cri) 419 (S.C.)**, particularly the observation made in paragraph 25. Though he would urge that the Respondents have not disputed the tendering of resignation and submission of the Form 32, in such an eventuality, the case of the Applicant for quashing of proceedings needs to be allowed.

4. Per contra, the learned counsel for the Complainant would urge that there is neither a statement in the application nor in a revision preferred before the Learned Sessions Judge as to when the Form 32 was tendered. According to him, in view of law laid down by the Apex Court in the matter of **Gunmala Sales Private Limited Vs. Anu Mehta and Others reported in (2015) 1 Supreme Court Cases (Cri.) 580** once a prima facie case is made out from the plain reading of the complaint, the order of issuance of process cannot be quashed. He submits that this is a fit case for dismissal of the proceedings.

5. Considering rival submissions. It is not in dispute that the cheque in question was issued prior to the date of resignation of the present Applicant. Apart from above, it is not brought on record as to the date on which the Form

32 was submitted before the Registrar of Companies.

6. In the background, if the case put forth by Respondent No.2 -Complainant before the Learned Magistrate alleging offence under the Negotiable Instruments Act if perused, there is a prima facie satisfaction of the requirement of an offence punishable under section 138, 141 and 142 of the N.I. Act.

7. So far as the case of the present Applicant that he was not a Managing Director on the date when the cheque was issued, was not in active management of the company is concerned, the same is in the form of his defence and this Court cannot appreciate the defence of the present Applicant at this stage of proceedings. So far as the submission of the Applicant in respect of claim of the resignation and submission of Form 32 is concerned, it is to be noted that Respondent No.2-Complainant, in categorical terms, has come out with the case before this Court that the Applicant is not in a position to disclose as to what date on which the Form 32 was submitted to Registrar of Companies. Apart from above, there is no material on record to infer the date of submission of Form No. 32 prescribed under the Companies Act noting the resignation as a Managing Direction of the Company to the Registrar of Companies. In that view of the matter, the submission that the law laid down in the matter of **Pooja**

Ravinder Devidasani (supra.), which is governed the case of the Applicant, is rejected.

8. Hence, no case is made out for interference of this Court. Criminal applications are rejected.

[NITIN W. SAMBRE, J.]