IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1486 OF 2017

Sachin Vikramrao Ghayal .....Petitioner

V/s.

The State of Maharashtra and another ....Respondents

Mr. Ganesh Bhujbal for the petitioner.
Mr. Milind Deshmukh for respondent no. 2.
Mrs. N. S. Jain APP for the State.

CORAM : NITIN W. SAMBRE, J.

DATE : MARCH 5, 2018.

P.C.

This is an application under section 482 of Code of Criminal Procedure, 1973 r/w Article 227 of the Constitution of India seeking quashing of proceedings initiated pursuant to the order passed by Judicial Magistrate First Class, Miraj against the applicant for an offence punishable under section 138 of Negotiable Instruments Act.

2 It is the case of the complainant that he was in some

commercial transaction with the present applicant/accused and towards admitted liability of Rs. 2,73,281/-. The disputed cheque came to be issued which was dishonoured resulting into filing of the complaint in question.

3 While questioning the maintainability of the proceedings against the petitioner, petitioner would invite attention of this Court to copy of the complaint placed at annexure 'B' along with verification at annexure 'C' so as to submit that neither statutory notice was served, nor the company which has issued the cheque was added as party accused. According to him once it is noticed that the cheque is issued for and on behalf of the company, the company is necessary party. He would urge that by virtue of provisions of section 138, 139 and 141 of Negotiable Instruments Act, proceedings against the present petitioner itself are not maintainable in absence of company being added as accused. Just because the director or authorised signatory of the company is added as an accused, that does not mean that there is compliance with the requirement under the aforesaid sections.

4 He would draw support from the Judgment of the Apex Court in the matter of **Aneeta Hada V/s. Godfather Travels and Tours Private Limited [(2012) 5 Supreme Court Cases 661]** so as to demonstrate that in absence of company being accused to the complaint, criminal prosecution under the Negotiable Instruments Act is not maintainable. He would particularly invite the attention of this Court to the observations made in para 22, 23, 24 & 32 of the said Judgment which read thus:

> *22. On a reading of the said provision, it is plain as day that if a person who commits offence under Section 138 of the Act is a company, the company as well as every person in charge of and responsible to the company for the conduct of business of the company at the time of commission of offence is deemed to be guilty of the offence. The first proviso carves out under what circumstances the criminal liability would not be fastened. Sub-section (2) enlarges the criminal liability by incorporating the concepts of connivance, negligence and consent that engulfs many categories of officers. It is worth noting that in both the provisions, there is a*

'deemed' concept of criminal liability.

23 Section 139 of the Act creates a presumption in favour of the holder. The said provision has to be read in conjunction with Section 118(a) which occurs in Chapter XIII of the Act that deals with special rules of evidence. Section 140 stipulates the defence which may not be allowed in a prosecution under Section 138 of the Act. Thus, there is a deemed fiction in relation to criminal liability, presumption in favour of the holder, and denial of a defence in respect of certain aspects.

24 Section 141 uses the term 'Person' and refers it to a company. There is no trace of doubt that the company is a juristic person. The concept of corporate criminal liability is attracted to a corporation and company and it is so luminescent from the language employed under Section 141 of the Act. It is apposite to note that the present enactment is one where the company itself and certain categories of officers in certain circumstances are deemed to be guilty of the offence.

32 We have referred to the aforesaid authorities to highlight that the company can have criminal liability and further, if a group of persons that guide the business of the companies have the criminal intent, that would be imputed to the body corporate. In this backdrop, Section 141 of the

> *Act has to be understood. The said provision clearly stipulates that when a person which is a company commits an offence, then certain categories of persons in charge as well as the company would be deemed to be liable for the offences under Section 138. Thus, the statutory intendment is absolutely plain.*

5 *Per contra*, the learned counsel for the respondent would urge that accused have already taken steps for impleading company "Sachin Ghayal Sugar Private Limited, Paithan" as accused before the learned Magistrate. According to him, he is also required to verify as to whether notice under section 138 of the Act was issued against the company or not. He would urge that the matter needs to be adjourned.

6 Considered rival submissions.

7 It is not disputed that the cheque in question which is formed to be a basis for initiating prosecution for an offence under section 138 of Negotiable Instruments Act was issued in the name of the complainant i.e. respondent herein for and on behalf of the company

namely "Sachin Ghayal Sugar Private Limited, Paithan". Perusal of the complaint depicts that present applicant is impleaded as accused in the complaint in his individual capacity as the Executive Director of the said company on whose behalf the cheque was issued was not added as party accused.

8 Verification of the complainant speaks of issuance of notice on 09/02/2016 which was received by the accused on 16/02/2016. Verification does not speak of issuance of any notice by the company which is claimed to have been sought to be added as accused by virtue of moving an amendment application before the Magistrate. At the first instance, without going into the maintainability of the such application presuming that such amendment is allowed and the company is added as party, still the fact remains that compliance under sections 138, 139 and 141 of the Negotiable Instruments Act cannot be inferred as neither there is statutory notice issued to the alleged company for the offence nor the complaint is initiated against such company within the statutory period prescribed under the provisions of the Negotiable Instruments Act.

9 Apart from above, maintainability of complaint against the director in absence of company being party accused is issued which is already decided by the Apex Court in the matter of **Aneeta Hada** [*cited supra*], the observations of the Apex Court particularly in paragraph 43, 51, 56, 58 & 59 are worth referring to.

10 From the record as it could be inferred that the managing director of the company is proceeded independently for the alleged offence punishable under section 138 of the Negotiable Instruments Act. In absence of company being added as party, in my opinion, prosecution is not maintainable.

11 As such, application is allowed in terms of prayer clause (a) which reads thus:

> *A) The Hon'ble High Court may be pleased to issue appropriate writ order or direction in like nature thereby, quash and set aside the complaint bearing No. S.C.C. No. 2682/2016 pending before Ld. Judicial Magistrate First Class, Miraj, initiated by Respondent no. 2 for the offence*

punishable under section 138 of Negotiable Instruments Act and the further summons issued by Ld. 2nd Judicial Magistrate First Class, Sangli, for appearance of petitioner and for that purpose issue necessary writ, order or directions.

[NITIN W. SAMBRE, J.]