

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

WRIT PETITION NO. 1943 OF 2016

M/s. ACG PAMPAC Machines Pvt. Ltd. ...Petitioner

V/s.

Ashok Kumar Agarwal and anr. ... Respondents

Mrs. Vrushali Bakare for the Petitioner.

Mr.Rohan Sonawane with Ms. Akshaya Puthran I/by B.Gopalakrishnan
for Respondent No.1. ----

Mr. A.R.Patil, APP for the Respondent/State.

CORAM : A.S.GADKARI, J.

DATE : 10th September, 2018

P.C.:

1. By the present petition under Article 227 of the Constitution of India, the petitioner/ original complainant has impugned the Judgment and Order dated 16.9.2015 passed by the learned Additional Sessions Judge for Greater Mumbai in Criminal Revision Application No.326/2014 allowing the said revision and setting aside the Order dated 11.3.2013 passed below Exh.1 in CC

No.3880/SS/2011, issuing process under Section 138 of the Negotiable Instruments Act passed by the learned Metropolitan Magistrate 23rd Court, Esplanade, Mumbai.

2. Heard the learned counsel for the petitioner, the learned counsel for respondent No.1 and the learned APP. Perused the record.

3. The petitioner has filed CC No.3880/SS/2011 under Section 138 read with 141 of the Negotiable Instruments Act in the Court of Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai against M/s Manali Properties and Finance Pvt. Ltd. being accused No.1 and other four accused persons. The respondent No.1 is the original accused No.2 in the said complaint. The learned Magistrate after perusing the complaint and documents annexed thereto was pleased to issue process under Section 138 of the Negotiable Instruments Act by its order dated 11.3.2013. The respondent No.1 challenged the said order of issuance of process by way of filing Criminal Revision Application No326 of 2013 before the learned Additional Sessions Judge for Greater Mumbai which has been allowed by the impugned Judgment and Order dated 16.9.2015.

It is the contention of respondent No.1 that a vague and bald statement pertaining to his involvement in the crime is made by the complainant in the complaint. That, he was present in the meeting of Board of Directors held on 12.5.2010 wherein resolution for obtaining loan of Rs.5.00 Crores as Inter Corporate Deposit from the complainant's company was passed. However, his role was restricted in participation of passing of the said resolution and all other documents are signed and executed by the original accused No.3 Mr. Saumitra Ghosh and therefore he has no concern with the present crime. The Revisional Court by accepting the said contention was pleased to quash and set aside the Order of issuance of process.

The complainant in Para 3 of his complaint though has made general statement that, respondent No.1 was Director of accused No.1 company and was actively involved in participation of the day to day affairs of the company in Para 11 has further made a categorical averment that, respondent No.1 along with other accused persons were actively involved in day to day management affairs and administration of the business of the accused No.1 Company and in

particular with the present transaction of receiving finance being Inter Corporate Deposit from the Complainant's company. The passing of resolution dated 12.5.2010 by accused No.1 company is a legal formality to finalize the process of negotiations by accused company and its Directors. As noted earlier a categorical case has been made out by the petitioner that respondent No.1 was actively participating in the process of negotiations in accepting the said Inter Corporate Deposit from the complainant company. In my considered view that, the Revisional Court has given undue importance to the plea of passing of the resolution by the Board of Directors of accused No.1 company and did not dwell upon the categorical pleadings of the complainant company.

4. After perusing the entire record, this Court is of the view that, a strong prima facie case against respondent No.1 has been made out by the complainant in the complaint and therefore, the learned Magistrate was pleaded to issue process against respondent No.1 and other accused persons. It further appears that there is an error committed by the Revisional Court while setting aside the Order dated

11.3.2013 of issuance of process, passed by the learned Magistrate, by taking into consideration irrelevant aspects of the matter.

5. In view of the above, the impugned Judgment and Order dated 16.9.2015 passed by the Additional Sessions Judge for Greater Mumbai in Criminal Revision Application No.326 of 2014 is hereby quashed and set aside and the Order dated 11.3.2013 passed by the learned Magistrate in CC No.3880/SS/2011 issuing process against Respondent No.1 is restored to the file.

6. Petition is allowed in the aforesaid terms.

(A.S.GADKARI, J.)