

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

CRI. WRIT PETITION NO. 4337 OF 2016

Kalanand Harihar Prasad & Ors. ... Petitioners.

Versus

State of Maharashtra & Anr. ... Respondents.

Mr. Rishi Bhuta, Advocate, a/w. Manish Bohra i/by M/s. A. S. Khan & Associates for the Petitioners.

Mr. Himansh Vidhani, Advocate a/w. Utkarsh Kumar i/by Khaitan & Co. for the Respondent No.2.

Mr. H.J. Dedhia, A.P.P for the State.

CORAM : REVATI MOHITE DERE, J.

DATE : FEBRUARY 15, 2018

P.C.

1 Heard learned counsel for the parties.

2 By this petition, the Petitioners have impugned the order dated 20th January, 2016 passed by the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai, by which the the learned Metropolitan Magistrate was pleased to

issue process as against the Petitioners (in C.C. No. 5769/SS/2015) as well as the order dated 30th November, 2016, by which the Revisional Court was pleased to reject the Petitioners' application for condonation of the delay in filing the revision application against the order of issue process.

3 Learned counsel for the petitioners submitted that the petitioners were not the Directors of Loop Mobile (I) Ltd., when the agreement was entered into between the Respondent No.2-Complainant and Loop Mobile (India) Limited. He submitted that the petitioners were appointed as Directors of the said company on 01.11.2014 and that they resigned from the said company on 10.12.2014. He submitted that hence, the petitioners, as Directors of Loop Mobile (I) Ltd., cannot be foisted with any liability under section 138 r/w. section 141 of the Negotiable Instruments Act.

4 Learned counsel for the Respondent No.2 - Complainant opposed the petition. He submitted that the

petitioners were admittedly the Directors of the Company, when the cheques in question were dis-honoured on 14.11.2014. He submits that all the Petitioners were in the key management and conduct of Loop Mobile (I) Limited and were part of the discussion with respect to the settlement that took place on 19.09.2014, He submits that the petitioners were aware of the aforesaid agreement, being the Directors of the Company and as such they cannot be discharged from the said case.

5 Perused the papers. The Respondent No. 2 - Complainant filed a complaint being Complaint No. 5769/SS/2015 in the Court of the learned Metropolitan Magistrate, 33rd Court, Billard Pier, Mumbai, as against the Loop Mobile (India) Ltd. and its Directors, for the alleged offence punishable under section 138 r/w. Section 141 of the Negotiable Instruments Act. A perusal of the complaint filed by the respondent no.2, shows that there are specific averments in the said complaint that the accused nos. 2 to 5 as Directors (the Petitioners herein are accused nos. 3 to 5) were incharge of and

responsible for the day-to-day affairs, functioning and conduct of the business of the accused Company i.e. Loop Mobile (I) Ltd., at all material times during the transactions with the Respondent No.2-Complainant and also on the date of the commission of the offence. Respondent No. 2 - Complainant has in para 12 has averred as under :

“12. The Accused No.2 is the Director of the Accused Company and he is the signatory of the cheque dated 24th October, 2014, which has been dishonoured and is the subject matter of the present Complaint. The Accused Nos. 3, 4 and 5 are the Directors of the Accused Company. The Accused No. 2 to 5 (Directors) are and were in charge and responsible for the day to day affairs, functioning and conduct of the business of the Accused Company on the date of commission of the offence punishable under section 138 of the Negotiable Instruments Act.”

It is also not in dispute that when the cheques were dishonoured on 14.11.2014, the Petitioners were the directors of the Company.

6 Considering the aforesaid, no interference is warranted in the order, issuing process as against the petitioners. Accordingly, the petition is dismissed.

7 All contentions of the parties are kept open. The trial court to conduct the case on merits, uninfluenced by this order.

(REVATI MOHITE DERE, J.)

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