

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO.470 OF 2013

(Siva Sagar Rao Yendamuri Vs. M/s. Diwanka Energy Pvt. Ltd., Nagpur and another)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Ms. Akansha Wanjari, Advocate for Applicant.
Shri R.M. Patwardhan, Advocate for Respondent No.1.
Shri C.A. Lokhande, APP for Respondent No.2/State.

CORAM: ROHIT B. DEO, J.

DATE: 13th JULY, 2018.

1] The applicant is arrayed as accused 2 in Summary Criminal Case 26487/2012 instituted by non-applicant 1 M/s. Diwanka Energy Pvt. Ltd. for offence punishable under section 138 of the Negotiable Instruments Act, 1881 ('the Act').

2] The averment in the complaint is that applicant – accused 2 is an Additional Director of accused 1 company.

3] The applicant challenged the order of issuance of process in Criminal Revision 88/2013 *inter alia* contending that on the face of averments in the complaint the issuance of process is vitiated since no specific role in the transaction is alleged against the applicant – Additional Director so as to attract the vicarious liability envisaged under section 141 of the Act.

4] The learned counsel for the applicant placed reliance on the decision of the Apex Court in *N Harihara*

Krishnan v. J Thomas reported in 2017 (10) SCALE 417. *Prima facie*, the submission of the learned counsel appears to be justified. However, in view of certain developments which are fairly brought to my notice by Shri R.M. Patwardhan, it would not be necessary to record any conclusive finding on the said submission.

5] Shri R.M. Patwardhan states that there is a settlement arrived at between the accused 1 company and/or his Managing Director pursuant to which certain amounts are already received by the complainant Diwanka Energy Pvt. Ltd. Shri Patwardhan as such does not have any serious objection to the quashment of the complaint as against the present applicant.

6] In view of the subsequent developments which are brought to my notice by Shri Patwardhan, I am inclined to exercise inherent powers and to quash criminal case 26487/2012 as regards the present applicant.

7] The judgment and order impugned is set aside and the complaint as against the present applicant is quashed.

JUDGE