

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

CRIMINAL APPLICATION (APL) NO.949/2018

Mrs. Madhumati Harshadbhai Shah

..Vs..

M/s. Star Orechem International Pvt. Ltd. and others

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

Court's or Judge's orders

Shri D.V. Chauhan, Advocate for the applicant.
Shri A.S. Jaiswal, Senior Advocate with Shri N.A. Padhye, Advocate for
respondent No.1.

CORAM : Z.A. HAQ, J.

DATE : 3.12.2018.

Heard.

By this application under Section 482 of the Code of Criminal Procedure, the applicant takes exception to the order passed by the learned Magistrate directing issuance of process for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and the judgment passed by the Sessions Court dismissing her revision application.

The contention of the applicant / accused is that the averments made in the complaint are not sufficient to enable the Court to prosecute her for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The learned Advocate for the applicant / accused has taken me through the averments made in the complaint, specially paragraph Nos.2, 3, 6 and 11. It is submitted that the allegations made by the complainant against the applicant are of general nature

and are not sufficient to hold that the applicant / accused was involved in the day-to-day affairs of the company at the relevant time when the offence is alleged to have been committed. It is submitted that the learned Magistrate as well as the learned Sessions Judge have failed to examine this aspect and, therefore, the impugned order and judgment are unsustainable. In support of this submission that the general averments are not sufficient to prosecute a Director of the company for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and it is necessary to point out the overt acts of the concerned Director, reliance is placed on the judgment given in the case of *Ashoke Mal Bafna V/s. M/s. Upper India Steel Mfg. & Engg. Co. Ltd.* reported in **2017 SCC Online SC 705**.

Learned Senior Advocate appearing for the applicant No.1 / complainant has submitted that the averments made in paragraph Nos.2, 3, 6 and 11 of the complaint are more than enough to enable the Court to issue process against the applicant / accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. It is submitted that, at this stage, there cannot be a rowing enquiry and the applicant No.1 / complainant will have to prove its case at the trial.

After going through the complaint, I find that the submissions made on behalf of the non-applicant No.1 company are required to be accepted. The averments in para Nos.2, 3, 6 and 11 of the complaint

are sufficient to *prima facie* show the involvement of the applicant in the day-to-day affairs of the company. I find that the learned Magistrate has not committed any error of jurisdiction by directing issuance of process against the applicant / accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The learned Sessions Judge has also examined the relevant aspects and has not committed any illegality while exercising the revisional jurisdiction. I do not see any reason to interfere with the impugned order and judgment. The criminal application is **dismissed** with costs quantified at Rs.20,000/- (Rs. Twenty Thousand) to be paid by the applicant / accused to the non-applicant No.1. The receipt showing payment of costs shall be produced before the learned Magistrate within one month.

CRIMINAL APPLICATION (APPP) NO.1848/2018

In view of the above order, this application praying for time to file certified copy of order dated 4th October, 2017 does not survive and is **disposed** accordingly.

JUDGE