

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

CRIMINAL APPLICATION (APL) NO. 1099/2018

Smt. Madhavi Manik Jaipurkar

..VS..

Shri Jeevan Baburao Talmale

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

Court's or Judge's orders

Shri B.P. Bhatt, Advocate for the applicant

CORAM : Z.A.HAQ, J.
DATED : 30/11/2018

Heard.

The non-applicant has filed the complaint under Section 138 of the Negotiable Instruments Act, 1881 against the applicant, Icon Infrastructure Limited (a company) and two others, who according to the complainant were the directors of the Icon Infrastructure Limited at the relevant time. The learned Magistrate has directed issuance of process against all the accused. The applicant had filed Criminal Application (APL) Nos. 291/2016 & 292/2016 before this Court under Section 482 of the Code of Criminal Procedure challenging the order passed by the learned Magistrate directing issuance of process and prayed that the complaint filed against her be quashed. By the order dated 04/05/2016, this Court directed issuance of notice to the non-applicant in that criminal application and also granted interim order. After the complainant was served with the notice of that criminal application and after hearing the parties, Criminal Application (APL) No. 291/2016 was disposed as withdrawn, by the order

dated 23/03/2017. While disposing the criminal application, this Court granted liberty to the applicant to file application praying for discharge. The applicant had filed an application before the learned Magistrate praying that she be discharged from the proceedings. This application was dismissed by the learned Magistrate by the order dated 07/04/2018. The order passed by the learned Magistrate was challenged by the applicant before the Sessions Court in criminal revision which is dismissed by the impugned judgment.

The contention on behalf of the applicant is that the facts on record show that even according to the complainant, the cheque in question was issued by the accused no. 2 – Madhusudan Dadaji Tiple from his personal account and neither the company i.e. Icon Infrastructure Limited nor the present applicant has any nexus with the issuance of cheque by the accused no. 2. It is submitted that unless it is pointed out by the complainant that the applicant is concerned with issuance of cheque and that the applicant was in-charge of the affairs of the Company at the relevant time, she cannot be prosecuted. According to the applicant, she was not the Director of the Icon Infrastructure Limited at the time when the cheque was issued and therefore she cannot be prosecuted.

To support the submission, the learned advocate for the applicant has relied on the judgment given by the Hon'ble Supreme Court in the case of P.J. Agro Tech Limited & Ors. vs. Water Base Limited **reported in 2012 ALL SCR at page 1698**. Reliance is also placed on the judgment given by this Court in the case of Sham S/o Sadashiv Wagh vs. Muley

Constructions Pvt. Ltd., Aurangabad & ors. reported in 2008
(3) Mh.L.J. (Cri.) at page 613.

In my view, the points raised by the applicant to support her claim for discharge cannot be considered at this stage. It is not that the applicant is total stranger. Whether the applicant was the Director of the company at the relevant time or not and whether the cheque in question was issued by one of its Directors to discharge the legal liability of the company or not will have to be adjudicated by the learned Magistrate and for that, the trial is necessary.

The judgment given in the case of P.J. Agro Tech Limited (supra) was in the facts of that case and therefore the above referred judgment is distinguishable. Of course, if the parties fail to discharge their burden of proving their rival claims about the liability of the present applicant, considering the proposition laid down in the above referred judgment, the applicant will be acquitted. However, the prayer for discharge cannot be granted at this stage.

The criminal application is **dismissed**. No costs.

JUDGE

Ansari