Anand

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3124 OF 2003

Sahaj Ram Kabra .Applicant
Age : about 35 years
Occu : Chartered Accountant
Presently residing at 14, Dignity
Apartment, Off. J. P. Road,
Seven Bunglows,
Andheri (W)
Mumbai – 400 053.

Vs.

1. Karnataka Bank Limited .Respondents
Through their employee and Branch
Manager, Mr. Reddy having registered
and Head Office at Karnataka Bank Ltd.
Kodilbail, Mangalore – 755 003 and
Branch Office at Life Insurance
Corporation, Jeevan Bima Nagar,
Borivali (W),
Mumbai – 400 103.

2. The State of Maharashtra

Mr. Paresh C. Mankad with Mr. Pravin D. Kadam i/b. Mr. Shailesh Kantharia, Advocate, for the Applicant
Mrs. P. P. Shinde, APP, for the Respondent No. 2 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 26.11.2019

<u>ORAL JUDGMENT</u>

. Heard learned counsel for the Applicant and the learned APP for the Respondent No. 2 – State.

2. By this Application, the Applicant has impugned the order dated 19.10.2001 passed by the learned Additional Chief Metropolitan Magistrate's 24th Court, Borivali, Mumbai, by which the Applicant's Application for dropping the proceedings qua him was rejected as well as the order dated 27.01.2003 passed by the learned Additional Sessions Judge, Greater Bombay, by which the Applicant's Revision Application was dismissed and the order of the Magistrate was confirmed.

3. The aforesaid Application was admitted on 06.11.2003 and rule on interim relief was made returnable after four weeks. It is pertinent to note, that despite service, none appears for the contesting Respondent No. 1. Although, Mr. Balkrishna Adyanthayya has filed his Vakalatnama on behalf of the Respondent No. 1, he was absent on the earlier dates and even today when the matter is called out he is not present.

4. Learned counsel for the Applicant (Original Accused No. 5 in Criminal Complaint No. 1002 / S / 1997) submits that both the Courts had failed to consider the Applicant's role and as such, having regard to the Applicant's role, ought to have dropped the proceedings as against the Applicant. He submits that the Applicant was appointed as a Non-Executive Director with M/s. Good Earth Industries Ltd. w. e. f.

23.02.1994 and as such was not concerned with the day to day affairs and activities of the said Company. He submitted that a perusal of the complaint shows that no averments, as contemplated under Section 141 of the Negotiable Instruments Act are mentioned in the said complaint. He further submitted that the Applicant, a Non-Executive Director had resigned from the said Company on 25.03.1996 and that the same is reflected in the Minutes of the meeting of the Board of Directors of the Company held on 28.03.1996. He submits that the cheques in question were issued on 01.07.1996 and dishonoured on 19.11.1996, much after the Applicant tendered his resignation. Learned counsel placed on record xerox copies of the said documents i. e. appointment letter of the Applicant as a Non-Executive Director and resignation letter, after producing the original documents. During the course of the arguments as noted, none appears for the contesting Respondent No. 1.

5. Perused the papers. The Applicant is arraigned as Original Accused No. 5 in Criminal Complaint No. 1002 / S / 1997 filed by the Respondent No. 1 in the Court of the learned Additional Chief Metropolitan Magistrate, 24th Court, Borivali, Mumbai for the alleged offence punishable under Section 138 r/w 141 of the Negotiable Instruments Act. According to the Respondent No. 1, the Applicant alongwith the other co-accused was the Director of the said Company i. e. M/s. Good Earth Industries Ltd. A perusal of the complaint which is

at Exhibit - 'A' on page No. 11 onwards shows that the requisite averment that at the time of the offence, the Applicant was incharge of the day to day affairs of the Company and responsible for the conduct of the business of the Company is amiss. The Apex Court in several Judgments has clearly held that if the necessary averment to constitute an offence under Section 138 r/w 141 of the Negotiable Instruments Act is not disclosed, the complaint cannot be proceeded with.

6. It is clear from the complaint that the necessary averment as required to show the Applicant's complicity is amiss. Even otherwise, it appears that the Applicant was appointed as a Non-Executive Director in the said Company on 23.02.1994 and had tendered his resignation on 25.03.1996. The minutes of the meeting of the Board of Directors of the Company held on 28.03.1996 shows that the said resignation was accepted by the said Company on 28.03.1996. The cheques in question were issued on 01.07.1996 and 01.10.1996 which were dishonoured on 19.11.1996, post the Applicant's resignation.

7. Considering what is stated aforesaid, the Application ought to succeed. Accordingly, the following order is passed.

<u>O R D E R</u>

(i) The impugned order dated 19.10.2001 passed by the learned Additional Chief Metropolitan Magistrate, 24th Court, Borivali, Mumbai as well as the order dated 27.01.2003 passed by the learned Additional Sessions Judge, Greater Bombay are quashed & set aside and the proceeding, being Case No. 1002 / S / 1997 is quashed as against the Applicant.

8. Accordingly, the Application is disposed of. Rule is made absolute in the aforesaid terms.

(REVATI MOHITE DERE, J.)