

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1727 OF 2017

Mr. Pradeep Khetshi Shah	..Petitioner
Vs.	
State of Maharashtra and Ors.	..Respondents

Mr. Sanjay Udeshi a/w Mr. Darshan Ashar I/b M/S. Sanjay Udeshi & Co.
for Petitioner.
Yashpal Maheshchandra Thakur for Respondent No.2.
Mr. Y.M. Nakhawa, APP for State.

CORAM : PRAKASH D. NAIK, J.

Date of reserving Judgment : 10 JULY, 2018.
Date of pronouncing Judgment : 07 JANUARY, 2019.

JUDGMENT :-

1. The petitioner has invoked Article 227 of Constitution of India and inherent powers of this Court under Section 482 of Code of Criminal Procedure challenging the impugned orders and the proceedings initiated by respondent No.2 under Section 138 read with 141 of the Negotiable Instruments Act, 1881.

2. The brief facts emanating from the complaint filed by the respondent No.2 are as follows :-

a) The complainant is a public limited company incorporated under the Companies Act, 1956 and carries on business as a spot exchange providing for an electronic trading platform for spot contracts in commodities on a compulsory delivery basis, having commenced live operations since October, 2008.

b) Accused No.1 is a company and trading/clearing member on the complainant. The accused No.2 is the Managing Director and signatory of the cheque. The accused No.2 had signed all the documents pertaining to membership on behalf of the accused No.1 including the undertaking as required in accordance with rules and Bye laws. The day to day affairs of the accused No.1 are managed by accused Nos. 2, 3 and 4 and as such they are incharge and are in control of the affairs of accused No.1 and liable for all the acts and deeds done by accused No.1. Accused Nos. 5 to 7 are also aware and responsible for the day to day affairs of the accused No.1.

c) The accused No.1 become a trading cum clearing member of the Company and was allocated CM-ID : 13960.

Accused No.1 had been conferred rights to trade and clear through the clearing house of complainant and was allowed to make deals for himself as well as on behalf of clients and clear such deals. The accused No.2 is the Managing Director and signatory of the cheque. The accused No.2 had signed all documents pertaining to membership, undertaking in accordance with Rules and Bye laws. The day today affairs of accused No.1 are managed by accused Nos. 2 to 7 and as such they are incharge and control of day to day affairs of accused No.1 and liable for all the acts and deeds done by accused No.1. There were certain defaults in pay-ins on the Exchange by its members including accused. There was an outstanding amount of Rs.26,47,25,122.75, as per the settlement schedule of the contracts. The accused No.1 paid an amount of Rs.3.02 crores and balance amount was to be paid. Accused No.2 on behalf of accused No.1 issued post dated cheque 11.09.2013 for an amount of Rs.1,66,00,000/- bearing No.852436, drawn on YES Bank Ltd., Nariman Point, Mumbai towards due discharge of part of its liability to the complainant.

d) The cheque was deposited on 14.09.2013. It was returned unpaid by the banker of the accused for the reasons “payments stopped by drawer” vide Bank Memo dated 17.09.2013.

e) The complainant issued legal notice to the accused under Section 138 of Negotiable Instruments Act on 17.10.2013 and called upon them to make the payment due and payable under the said cheque within 15 days from the date of receipt of the said notice. The said notice was received by the accused Nos. 1, 2, 4 on 19.10.2013 and accused Nos. 6 and 7 on 21.10.2013. Since no payment was made, the complaint was filed on 03.12.2013 before the Court of Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai.

3. The trial Court took cognizance of the complaint and issued process against the accused for offence under Section 138 of the Negotiable Instruments Act by order dated 01.04.2015.

4. The applicant preferred revision application No.1178 of 2016 before the Sessions Court and the same was rejected by order

dated 20.01.2017.

5. Learned Counsel for the petitioner made following submissions :-

i) The petitioner was an independent professional director of accused No.1-Company. He had joined the company as independent director on 14.03.2013. During his tenure the petitioner was not concerned with the day to day activities of accused No.1 Company.

ii) The petitioner is a practicing chartered accountant since 1999 and he had been invited on the board of the accused No.1-Company as an independent professional director. He was appointed as Independent non executive Director of accused No.1 Company.

iii) The petitioner has resigned as a director of accused No.1-Company vide letter dated 01.07.2013. His resignation was brought to the notice of registrar of companies by accused No.1 Company and necessary Form-32 was filed on 30.08.2013 giving effect to petitioner's resignation from 01.07.2013. The cheque

was issued and dishonoured after filing of Form 32.

iv) The impugned cheque is dated 11.09.2013 which was deposited on 14.09.2013 and returned unpaid vide Memo dated 17.09.2013. Thus, at the time when the offence was committed, the petitioner was not incharge and responsible for the day to day affairs of accused No.1-Company.

v) The petitioner has not participated in any meetings and not even received any notice of board meeting from accused No.1 and neither received any pecuniary benefit. He was Independent Non Executive Director only for a period of four months.

vi) The petitioner was served with notice dated 17.10.2013. In the said notice the complainant has stated that addressee Nos. 2 to 5 (accused Nos. 2 to 5) were looking after the day to day affairs of accused No.1 Company. Even before receipt of notice dated 17.10.2013, the petitioner had received notice dated 28.08.2013 with respect to dishonour of cheque bearing No.852435 dated 16.08.2013 for sum of Rs.88,24,000/-. The

petitioner vide reply dated 4.09.2013 intimated the entire facts in respect to his role and resignation from directorship by petitioner with effect from 01.07.2013.

vii) Sessions Court has rejected the revision application without application of mind to facts and the law.

6. Learned Advocate for the petitioner relied upon following decisions :-

- i) **Harshendra Kumar D. Vs. Rebatilata Koley and Ors.¹**
- ii) **Aparna A. Shah Vs. Sheth Developers Private Limited and Another.²**

7. Learned Advocate for respondent No.2 submitted that the petitioner was incharge and responsible for day to day affairs of the accused No.1-Company. In the complaint, it is specifically mentioned that the petitioner was incharge and in control of the day to day affairs of the accused No.1. It is submitted that in paragraph 4 (b), it is categorically stated that the day to day affairs of the accused No.1 are

1 (2011) 3 SCC 351

2 (2013) 8 SCC 71

managed by accused Nos. 2 to 7 and as such they are incharge and control of day to day affairs of accused No.1 and are liable for all the acts and deeds done by accused No.1. The petitioner was impleaded as accused No.6 in the complaint. It is submitted that in the light of the avernments made in the complaint, the petitioner cannot contended that he has no role to play with affairs of accused No.1. The petitioner has not replied to the statutory notice. The resignation of the petitioner is disputed. The petitioner has not followed the procedure with regards to purported resignation. The resignation letter does not show the acknowledgement of receipt of resignation by accused No.1. In Form 32, the petitioner is shown as independent director for the period from 14.03.2013 as well as additional director. Thus, the submission of the petitioner that he was an Independent Non Executive Director is debatable and it is to be proved at the time of trial. His resignation from the directorship is also required to be proved at the time of trial. Learned Counsel for the petitioner urged that the petition is not maintainable since the plea of the accused is already recorded on 07.06.2017 and the trial has to be taken to its logical end.

8. Learned Advocate relied upon the following decisions :-

- i) **Subramaniam Sethuraman Vs. State of Maharashtra and Anr.**³
- ii) **Lata Pramod Dave Vs. Mode Export Pvt. Ltd. and Ors.**⁴
- iii) **Subhiksha Trading Services Limited Vs. Kotak Mahindra Bank Limited**⁵
- iv) **Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited**⁶
- v) **Suhas Bhand Vs. State of Maharashtra and Anr.** delivered by this Court in Cri. Writ Petition No.2330 and 2331 of 2006.
- vi) **Mrs. Jayanti Senthil Nathan Vs. Kotak Mahindra Bank Ltd. And Anr.** delivered by this Court in Cri. Application No.164 of 2012.

9. Having heard both the sides, I have also scrutinized the documents on record. The proceedings are initiated under the provisions of Section 138 of Negotiable Instruments Act. The primary contention of the petitioner is that he was independent professional director of accused No.1-Company and he had resigned with effect from 01.07.2013 which is fortified by Form 32. Whereas the contention of the complaint is that the petition is not maintainable and complaint specifies the role of the petitioner and there are sufficient averments therein

3 2004 (13) SCC 324

4 2017 ALLMR (Cri) 533

5 2011 (2) Mh.LJ 353

6 2016 (10) SCC 458

indicating that the petitioner along with the other accused was incharge and in control of day to day affairs of accused No.1 and is liable for acts and deeds of accused No.1. The resignation is disputed. The contention that the petitioner is Independent Director is also debatable and the issues are triable before trial Court.

10. Since, the learned Advocate for the respondent-complainant has raised an issue with regards to maintainability of this petition, it would be apt to deal with the said submission before adjudicating on the other issues. The contention of the complainant is that plea of the accused has been recorded in accordance with Section 251 of Criminal Procedure Code and in view of that this Court may not quash the proceedings in exercise of powers under Article 227 of Constitution of India or inherent powers under Section 482 of Cr.P.C. It is contended that having recorded plea the trial has to be taken to the logical end. Thus, the petition is not maintainable in law. Learned Counsel has placed strong reliance on the decision of the Hon'ble Supreme Court in the case of **Subramaniam Sethuraman (Supra)**. It is submitted that in the said decision the Apex Court has held that the High Court was justified in concluding that once plea of accused is recorded under Section 252, procedure contemplated under Chapter XX has to be

followed which is to take trial to its logical conclusion.

11. It would be necessary to consider the factual matrix of the aforesaid decision and the ratio laid down therein. The appeal was preferred by the accused before the Hon'ble Supreme Court challenging the order passed by the High Court in a revision petition filed by the complainant whereby the High Court allowed the revision petition and set aside the order of discharge made by the trial Court. The complaint was lodged before the trial Court under Section 138 of Negotiable Instruments Act against the appellant therein and others which includes company and its directors. The appellant was one of the director of the company. After receipt of the complaint, the accused No.1 challenged the same before the very same magistrate on the ground that the magistrate could not have taken cognizance of the offence because of the defective statutory notice. Therefore, the company sought for its discharge. The said application was rejected. Thereafter, the second application for discharge was filed by the company on the very same ground which was allowed by the magistrate, following the judgment of the Supreme Court in the case of **K.M. Mathew Vs. State of Kerala and Anr.**⁷, in which it was held that it was open to the magistrate taking cognizance and issuing process to recall the said process in the event of

⁷ 1992 Cri.LJ 379

the summoned accused showing to the Court that the issuance of process was legally impermissible. The magistrate came to the conclusion that the statutory notice issued by the complainant was not in conformity with the requirement of law. Aggrieved by order of discharge passed by the trial Court, the complainant challenged the same by way of revision petition before the Sessions Court on the ground that the learned magistrate had no power to review his earlier order because of the bar under Section 362 of Cr.P.C. The Sessions Court accepted the contention of the complainant and allowed the revision petition without going into the merits of the legality of the statutory notice. The company thereafter challenged the order of Sessions Court by Cri. Writ Petition under Article 227 of the Constitution of India before the High Court. The said petition was rejected by the High Court by order dated 20.12.2000 on the ground that once the magistrate records the plea of the accused and the accused pleads not guilty then the magistrate is bound to take all such evidence as may be produced in support of the prosecution and there is no provision under Cr.P.C. enabling the magistrate to recall the process and discharge the accused after recording the plea of the accused. It was undisputed that the plea of all the accused was recorded by the magistrate on 01.11.1999. The said order of the High Court was challenged before the

Supreme Court by preferring Special Leave Petition which was rejected summarily on 05.02.2001. While disposing of the said petition, the Hon'ble Supreme Court had observed that the Counsel for the petitioner after noticing the observations of the Court requested for permission to withdraw the Special Leave Petition without prejudice to his contentions to be raised at the appropriate stage and the SLP was dismissed as withdrawn. After withdrawing the SLP, the second round of litigation had commenced challenging the issuance of process by the appellant Subramaniam Sethuraman who was the director of the said company which had earlier fought the litigation right up to the Supreme Court. In the fresh application filed before the trial Court, the appellant contended that the statutory notice issued was contrary to law. Hence, no cognizance could have been taken by the learned magistrate nor the process could have been issued. This application was filed immediately after the rejection of the aforesaid SLP by the Apex Court. The application preferred by the appellant was based on similar grounds as were taken by the company in the earlier round of litigation. However, the application of the appellant was allowed by the magistrate holding that the statutory notice issued prior to filing of the complaint was not in accordance with law and in view of the judgment of the Supreme Court in the case of **K.M. Mathew (Supra)**, it was open to the trial Court to

recall the order of issuance of process. The appellant was discharged. Being aggrieved by the said order of the trial Court, the complainant filed Criminal Revision Petition before the High Court which reiterated its earlier view that it was not open to the magistrate to order the discharge of an accused once his plea has been recorded and on that basis it allowed the revision petition of the complainant keeping open the question of validity of the statutory notice to be raised at the trial. The said order was challenged by Shri. Sethuraman before the Hon'ble Supreme Court which is the subject matter of the aforesaid decision. While dealing with the challenge, the Supreme Court has observed that when the matter had come up for preliminary hearing the Court had observed that the decision rendered in **K.M. Mathew's** case may require reconsideration and the appeal was referred to a bench of three Judges. However, the correctness of the judgment in **K.M. Mathew's** case came up for consideration before a three Judge Bench of the Supreme Court. In the case of **Adalat Prasad Vs. Rooplal Jindal and Ors.**⁸ and the three Judge bench did not agree with the law laid down by the Court in **K.M. Mathews'** case. The contention of the complainant before the Apex Court, in the case of **Subramaniam Sethuraman (Supra)** was that the case in hand was triable as a summons case and the Code has not contemplated a stage of discharge once the plea of not guilty is

8 2004 (2) BCR (Cri) 857

recorded. The appellant has to face a trial as contemplated in Chapter XX of the Code. The appellant's Counsel had challenged the decision of the High Court wherein it was observed that once plea is recorded in a summons case, it is not open to the accused to seek discharge. The Hon'ble Supreme Court in paragraph 16 of the aforesaid decision rejected the said contention. It was observed that the case involving a summons case is covered by Chapter XX of the Code which does not contemplate a stage of discharge like Section 239 which provides for a discharge in a warrant case. Therefore, the High Court was correct in coming to the conclusion that once the plea of the accused is recorded under Section 252 of the Code, the procedure contemplated under Chapter XX has to be followed which should take a trial to its logical conclusion. It was further observed that in accordance with observation of the Supreme Court in Adalat Prasad's case, the only remedy available to an aggrieved accused to challenge an order at an interlocutory stage is the extra ordinary remedy under Section 482 of the Code and not by way of application to recall the summons or to seek discharge which is not contemplated in the trial of a summons case. From the observations of the Apex Court in paragraph 17 of the said decision it is clear that the powers of the High Court under Section 482 of Cr.P.C. are available to challenge the proceedings to an aggrieved accused at an interlocutory

stage. The learned Counsel for the appellant then contended before the Supreme Court as reflected in paragraph 18 and 19 of the said decision that the appellant be permitted to question the order of issuing of process under Section 482 of Cr.P.C. The said contention was opposed by the Counsel for the complainant on the ground that the proceedings are pending since 1996 and though there was direction for early disposal, the accused have delayed the trial. The accused has been repeatedly raising the same plea with a view to delay the trial. The Hon'ble Supreme Court in paragraph 19 of the said decision has observed that while dismissing the earlier SLP as withdrawn the question of of legality of the notice was kept open to be decided at the trial and therefore, legitimately the appellant should raise the issue to be decided at the trial. However, the accused cannot be prevented from taking recourse to a remedy which is available in law. In Adalat Prasad's case it is held that for an aggrieved person only course available to challenge the issuance of process under Section 204 of the Code is by way of petition under Section 482 of the Code. Hence, although permission was not granted to the appellant to file a petition under Section 482, the Court cannot deny him the statutory right available to him in law and taking into consideration the history of the case, the concerned Court entertaining the application will take into consideration

the objections raised by the complainant in this case as to delay that is being caused by the entertainment of applications and petitions filed by the accused. Thus, the powers under Section 482 of Cr.P.C. are available to the accused to challenge the proceedings. From the observations of the Apex Court in the aforesaid decision it cannot be said that the application under Section 487 of Cr.P.C. is not maintainable after recording plea of the accused.

12. In the case of **Adalat Prasad Vs. Rooplal Jindal (Supra)**, it was observed that if a magistrate takes cognizance of an offence and issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provisions of Section 200 and 202, the order of the magistrate may be vitiated but then the relief and aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because Criminal Procedure Code does not contemplate a review of an order. Hence, in the absence of any review power or inherent power with the subordinate Criminal Courts the remedy lies in invoking Section 482 of the Code. The factual matrix in the case of **Subramaniam Sethuraman (Supra)** before the Hon'ble Supreme Court is that the accused had preferred an application before the trial Court for recall of process. Relying on the decision of the Apex Court in the case of **K.M. Mathew (Supra)** the said application was

allowed. In the light of the facts, it was observed that having recorded plea trial has to be taken to logical conclusion. Paragraph 19 of the said decision categorically mentions that the accused cannot be precluded from exercising the power under Section 482 of Cr.P.C.

13. In the case of **Aparna Shah (Supra)**, it was observed that only after issuance of process a person can approach the High Court seeking quashing of the same on various grounds available to him. It was observed that, the High Court was clearly wrong in holding that the prayer of the appellant cannot even be considered. In the said case, the High Court had recorded the stand of the appellant that she was not the signatory of the cheque but rejected the contention that the amount was not due and payable by her solely on the ground that the trial is in progress.

14. Learned Counsel for the respondent has relied upon the decision of this Court in the case of **Subhiksha Trading Services Limited (Supra)** wherein it was contended by the advocate for the complainant that the High Court was expected to interfere with the order of issuance of process only in the rarest of the rare cases and more particularly in cases where the plea has been recorded. The High Court

ordinarily should not interfere under its inherent jurisdiction. The charge had been explained to the accused by recording plea. Affidavit was also tendered in lieu of examination-in-chief. In the circumstances, it was observed that the plea has been recorded and affidavit by examination-in-chief is also filed and by referring to the various decisions including the decision of the Hon'ble Supreme Court in the case of **Subramaniam Sethuraman (Supra)**, it was observed by the High Court that the Court should not ordinarily interfere in its inherent jurisdiction after the plea is recorded and the recording of evidence has been commenced. Thus, the decision was rendered in the facts of the said case and it was observed that ordinarily the High Court shall not interfere under Section 482 of Cr.P.C in view of recording plea. It is pertinent to note that in the said decision the Court has also analysed the merits of the case and dismissed the said petition.

15. In the case of **Sampelly Satyanarayana Rao (Supra)**, relied upon by the Counsel for respondent-complainant, it was observed by relying upon the decision in the case of **HMT Watches Ltd. Vs. M.A. Abida⁹ and Rallis India Ltd. Vs. Poduru Vidya Bhushan¹⁰** that the High Court should not have expressed its view on the disputed questions

⁹ (2015) 11 SCC 776

¹⁰ (2011) 13 SCC 88

of fact in a petition under Section 482 of Code of Criminal Procedure to come to a conclusion that the offence is not made out. In the case of **Lata Pramod Dave (Supra)**, this Court had observed that Section 138 of Negotiable Instruments Act has converted civil liability for dishonour of cheque into penal liability and Section 141 casts vicarious liability on the director of the company and how to deal with the said liability has always been a vexed question and engaged the attention of the higher Courts since its enactment. By analyzing the facts of the said case, the petition was dismissed on the ground that the petitioner has failed to make out the case for quashing the process issued against her for the offence punishable under Section 138 (141) of Negotiable Instruments Act. One of the submission was that the petitioner therein had tendered resignation letter and expressed her desire to discontinue with accused No.1 company and the letter of resignation was accepted and reflected in Form 32. The Counsel for the complainant had contended that the complaint contains sufficient averments as required under Section 141 of Negotiable Instruments Act and on the basis of that the process has been issued. It was also contended that the resignation was subsequent to the transaction in question and issuance of post dated cheques and the resignation is disputed fact as there is every reason to believe that it is anti dated. The resolution was not produced and there was no

uncontrovertible and unimpeachable evidence to prove that at the relevant time when the loan transaction took place, the petitioner was not the director of accused No.1 company. Learned Counsel for the respondent also relied upon the decision in the case of **Suhas Bhand (Supra)** wherein plea of resignation was taken by the petitioner/accused. The said contention was turned down by the Court as the complainant had challenged the factum of resignation by contending that the said accused was main director incharge and in control of the company. He had signed agreement of loan on behalf of the company. He availed all the entire loan facilities on behalf of the company. He also registered the charge of immovable properties on behalf of the company. He sent the progress report on behalf of the company and he shown to have acted on behalf of the company all through out the transactions between the parties and claimed to have resigned only a week thereafter and refuted the liability. This Court therefore observed that each case is required to be seen on its own merits. Thus, based on the facts of the said case, the contention with regards to the resignation of director was not accepted by the Court. Similar view was taken in case of **Mrs. Jayanti Nathan (Supra)**, it was observed that the plea is already recorded under Section 252 of Cr.P.C. The procedure contemplated under Chapter XX has to be followed. It is

to take the trial to its logical conclusions. On the basis of the facts, the petition was dismissed.

16. In the present case, it is the contention of the petitioner that he was an additional director only for a period of four months. The documents indicate that he was appointed on 14.03.2013 and he has resigned on 30.08.2013. The contention of the petitioner is that there is nothing to doubt the genuineness of Form 32 with regards to the resignation of the petitioner. Except stating that the complainant is disputing the same is not sufficient. Learned Counsel for the respondent had submitted that in the case of **Suhas Bhand (Supra)**, it was observed by this Court that if the resignation is not accepted or admitted by the complainant upon production of the certified copy of the Form No.32, the accused would have to prove the truth of the contents of the said certified copy that is the factum of his resignation and the such accused cannot be discharged upon production of certified copy of Form No.32. However, in the case of **Harshendra Kumar (Supra)**, the Hon'ble Supreme Court after analyzing several decisions on the issue of Section 138 and 141 of the Negotiable Instruments Act has observed that criminal prosecution is a serious matter, it affects the liberty of a person. No greater damage can be done to the reputation of the person then dragging him in a criminal case. The High Court fell into grave error in

not taking into consideration the uncontroverted document relating to resignation from the post of the director of the company. Had these documents been considered by the High Court, it would have been apparent that the appellant had resigned much before the cheques were issued by the Company. It was further observed that the accused had resigned before the cheques were issued and dishonoured. The acceptance of appellant's resignation is reflected in the resolution as well as Form 32 of the company. It is not the case of the complainant that the dishonoured cheques were issued by the appellant. These facts leave no manner of doubt that on the date of the offence was committed by the company, the appellant was not the director and he had nothing to do with the affairs of the company. In this view of the matter, if the Criminal complaints are allowed to proceed against the appellant, it would result in gross injustice to the appellant and tantamount to an abuse of process of Court. In the present case, although the resolution is not produced, there is nothing on record to doubt the genuineness of Form 32 produced by the petitioner-accused. The Form 32 was filed on 30.08.2013 giving effect to resignation of petitioner from 01.07.2013. Thus, before date of issuance of cheque and its dishonour the petitioner had resigned and Form 32 was filed with ROC Karnataka. The verification clause of Form 32 mentions that accused No.1 Company has

verified information and that the person tendering it has been authorised by Board of Directors resolution dated 17.07.2013 to sign and submit the Form. The letter of resignation dated 01.07.2013 bears the signature and stamp of Deputy Registrar of Companies Karnataka, Bangalore and stamp of Registrar of Companies Karnataka which indicates that the said letter is part of Form 32. The petitioner had contended that he had received notice dated 28.10.2013 in respect to another cheque which was replied by stating that the petitioner has resigned from accused No.1 Company. The notice dated 17.10.2013 that accused No.2 is Managing Director and he has signed all documents and accused Nos. 2 to 5 were looking after day to day affairs of accused No.1. Reference is also made to circular dated 12.07.2013 directing companies to furnish undertaking that all existing contracts will be settled on due dates. The said letter is subsequent to resignation of petitioner. The notice also mentions that accused Nos. 2 to 5 were incharge and responsible for conduct, liability and daily affairs of business of accused No.1. Petitioner is arraigned as accused No.6. The notice does not give any role to the petitioner. In the case of **Gunmala Sales (P) Ltd. Vs. Anu Mehta**¹¹ it was observed that in the facts of a given case on an oral reading of the complaint, the High Court may despite the presence of the basic avernments, quash the complaint.

¹¹ 2015 (1) SCC 103

Despite the presence of basic averment, it may come to a conclusion that no case is made out against the director. Take for instance, the case of a director suffering from a terminal illness was Director at the relevant time or a director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a director is merely an arm twisting tactic, the High Court may quash the proceedings. To establish such case unimpeachable incontroverting evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have brought to the notice of the Court. Such cases may be few and far between but the possibility of such a case being cannot be ruled out. Thus, from the factual aspects of the present case, it is seen that the petitioner had resigned from accused No.1 company. He was director from 14.03.2013 till 01.07.2013. There is no material to doubt the genuineness of Form 32 produced by the petitioner. Merely an account entry in Form 32 as Additional Director/independent director Form 32 with regards to resignation cannot be discarded. It is not necessary to refer to the other issues raised by the petitioner as the proceedings are required to be quashed on this ground alone. It is also pertinent to note that the process was issued in the present case on 01.04.2015. The petitioner thereafter preferred revision application challenging the order of process before the

Sessions Court which was rejected by order dated 20.01.2017. The plea was recorded on 07.06.2017. In the light of the observations made above merely because the plea was recorded on the aforesaid date, the petition cannot be dismissed on the ground that it is not maintainable. The inherent powers of the High Court can be exercised where it is found that there is abuse of process of law and to meet the ends of justice. The apex Court in large number of decisions beginning from **R.P. Kapur Vs. State of Punjab**¹² has laid down the criteria for entertaining the application under Section 482. Even where the revision is barred, it was held that the remedies under Article 226 and 227 of the Constitution of India would be available. Even in cases where the second revision before the High Court after dismissal of the first one by the Court of Session is barred under Section 397 of the Code, the inherent powers of the Code has been held to be available. The inherent powers of the High Court is not conferred by statute but has been saved there under. The Apex Court in the case of **Dhariwal Tobacco Products Ltd. And Ors. Vs. State Maharashtra & Anr.** delivered in Criminal Appeal No.2055 of 2007 has observed that it is well settled that inherent powers under Section 482 can be invoked by the accused in the appropriate case irrespective of other factors and Court can exercise the same in a deserving case within the parameters of law. For the reasons

12 AIR 1960 SC 866

stated hereinabove, the petition deserves to be allowed by setting aside the impugned proceedings against the petitioner.

:: ORDER ::

(i) Impugned order dated 20.01.2017 passed by the Sessions Court in Criminal Revision Application No.1178 of 2016 and the order dated 01.04.2015 passed by the Metropolitan Magistrate, 23rd court, Esplanade, Mumbai and the proceedings in C.C. No.304/SS/2015 pending in the Court of Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai are quashed and set aside as against the petitioner.

(PRAKASH D. NAIK, J.)