

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 782 OF 2016
WITH
CRIMINAL APPLICATION NO. 783 OF 2016
WITH
CRIMINAL APPLICATION NO. 791 OF 2016**

M/s. Bhagyashri Textiles Pvt. Ltd.

...Applicant

Versus

M/s. Ritz Fashions & Ors.

...Respondents

Mr.Anil Agarwal for the Applicant.

Mr.Vikas S. Sharma for Respondent Nos. 2 and 4.

Mr.A.R.Patil, APP for Respondent No.5-State.

**CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 25 JANUARY 2019**

P.C.:

1. All these Criminal Applications are filed under section 482 of the Code of Criminal Procedure, 1973.

2. In these Criminal Applications, the orders dated 4th October, 2014 passed by the learned Metropolitan Magistrate, 55th Court, Sewree, Mumbai in C.C. No. 5659/SS/2014, C.C. No. 5660/SS/ 2014 and

C.C.No. 5661/SS/ 2014 respectively, refusing to issue process against respondent No.1, 2 and 4 for the offence punishable under sections 138 read with 141 of the Negotiable Instruments Act as well as the order dated 2nd March, 2016 passed by the learned Sessions Judge, Greater Mumbai, dismissing Criminal Revision Application Nos. 1446 of 2014, 1447 of 2014 and 1448 of 2014 respectively, are challenged.

3. Respondent No.1 is a proprietorship firm of Jalaj Kakkar (HUF), respondent No. 2 is a Karta and respondent No.4 is a member of the said HUF. The process has been issued only against respondent No.3, who is a signatory to the dishonored cheques.

4. Heard submissions.

5. The issue involved in the present case is no more *res integra* in view of the judgment of Single Judge of this Court (Aurangabad Bench) in the case of ***The Dadasaheb Rawal Co-op. Bank of Dondaicha Ltd. Dist.- Dhule Vs. Ramesh s/o. Jawrilal Jain & Ors.*** reported in ***2008 ALL MR (Cri.) 2528*** wherein the Single Judge has discussed the expression "company" and the definition of the said word as contemplated under section 141 of the Negotiable Instruments Act. The term "association of

individuals" includes club, trust, HUF business, etc., and it is to be construed ejusdem generis alongwith other expressions "company" or "firm".

6. I have perused the complaints in these cases so also the impugned orders. There are averments attributing a specific role to respondent No.2, who is called as a Karta of the said HUF and also respondent No.4, who is a member of the said HUF. Respondent Nos. 2 and 4 were predominantly looked after the business of the proprietorship firm i.e., respondent No.1. In view of this specific averment, the orders of issuance of process qua to respondent Nos. 1, 2 and 4 are hereby set aside. The learned Magistrate is directed to issue process against respondent Nos. 1, 2 and 4 as it was issued against respondent No.3 in the complaint. Rule is made absolute in terms of prayer clauses (a) and (b).

(MRIDULA BHATKAR, J.)