IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.852 OF 2018

1) VISHNU BHAGWAN	**)**
	)
2) MURLI DHAR ASTHANA	**)**
	)
3) RAVINDRA NATH AGARWAL	**)**
	)
4) ANIL KUMAR	**)...APPLICANTS**

V/s.

1) INGRAM MICRO INDIA PVT. LTD	**)**
	)
2) STATE OF MAHARASHTRA	**)...RESPONDENTS**

Mr.Wesley Menezes, Advocate for Applicants.
Mr.Sagar Wagle i/b. Mr.Kedar Wagle, Advocate for Respondent No.1.
Mr.A.R.Kapadnis, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 19th DECEMBER 2019

ORAL JUDGMENT :

1 By this application under Section 482 of the Code of Criminal Procedure, applicants/original accused nos.4 to 7 are

challenging the order dated 13th June 2018 passed by the learned Additional Sessions Judge in Criminal Revision Application No.1299 of 2017 thereby rejecting their revision application challenging issuance of process by the learned Metropolitan Magistrate, Vikhroli, Mumbai, in a complaint filed by the respondent no.1 for the offence punishable under Section 138 of the Negotiable Instruments Act.

2 Heard. Rule. Rule returnable forthwith. Heard finally.

3 The learned counsel appearing for applicants vehemently argued that applicants were independent Directors of the accused Company and they are in no way concerned with the issuance of cheques in favour of respondent no.1/original complainant. It is further argued that accused Company suffered huge loss and there are many litigations initiated by the said Company against various satellite providers. Therefore, as the cheques were not issued by applicants and as applicants were not

Executive Directors of the accused Company, issuance of process against them amounts to abuse of process of court.

4 As against this, the learned counsel appearing for respondent/original complainant drew my attention to the receipt Form no.MGT-7 i.e. Annual Return Form issued by the Registrar of Companies and demonstrated that accused Company was not having any independent Directors. According to him, therefore, the impugned order is perfectly legal and just.

5 I have considered the submissions so advanced and perused the material placed on record. In the complaint for the offence punishable under Section 138 of the Negotiable Instruments Act, it is averred by the respondent/original complainant that present applicants are Directors of accused no.1 Company and they are responsible for day to day working of the Company. It is averred that applicants and other Directors, at the relevant time, when the orders for supply of goods were placed by the Company, were active in the administration, management and

functioning as well as day to day decision making process of the Company. It is further averred that accused no.1 Company issued cheque in discharge of debt due to Company against supplies made by the complainant and upon depositing the said cheque, the same came to be dishonoured. Then, there are averments regarding issuance of statutory notice and other material particulars constituting the offence.

6 Considering the averments made in the complaint and on the basis of verification statement, so also after perusal of documents annexed to the complaint, the learned trial Magistrate issued process for the offence punishable under Section 138 of the Negotiable Instruments Act and in the revision application, the learned revisional court found that the said order was neither illegal nor perverse.

7 Annual Return Form of the accused Company shows that it was not having any independent Director. Proviso clause to Section 141 of the Negotiable Instruments Act reads as under :

> “141 ………
>
> Provided that …..
>
> Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.”

It is not pointed out that applicants are nominated as Directors of the accused Company by virtue of their holding any office or employment in the Central or State Government or a financial corporation owned or controlled by the Central Government or the State Government.

8 If a Director wants process to be quashed on the ground of vague averments or on the ground that he is an independent Director appointed as per second proviso to Section 141 of the Negotiable Instruments Act, such a Director is required to furnish some sterling incontrovertible material or acceptable

circumstance demonstrating this fact. No such material is forthcoming. I find no substance in the argument of the learned counsel for applicants that subsequently, three cheques were given to the accused Company for settlement. That is an irrelevant consideration.

9 In the light of averments made in the complaint as well as annexures thereto, it cannot be said that there is no sufficient ground for proceeding against accused persons. Proceeding, by no stretch of imagination, can be said to be abuse of process of court.

10 The application, as such, is devoid of merits. Therefore, the order :

ORDER

The application is rejected.

(A. M. BADAR, J.)