

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5228 OF 2019

SHAMRAO MARUTI BHOSALE)...PETITIONER

V/s.

**ED&F MAN COMMODITIES INDIA PVT. LTD.)
AND ANOTHER)...RESPONDENTS**

Mr.Balwant Salunkhe a/w. Mr.Jeetendra Ramugade i/b.
Ms.Priyanka Chandeliya, Advocate for the Petitioner.

Mr.A.R.Kapadnis, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 19th DECEMBER 2019

P.C. :

1 Heard the learned counsel appearing for the petitioner.
He argued that the petitioner though was a Director of the
accused Company, was not either a party to the contract nor a
signatory to the contract, and therefore, the learned trial court
erred in issuing process against him.

2 I have considered the submissions so advanced and perused the complaint. The petition is by accused no.5 Shamrao Bhosale, who is, undisputedly, Director of accused no.1 New Phaltan Sugar Works Limited. Perusal of the complaint shows that there is averment to the effect that the petitioner i.e. accused no.5 is the Director of the accused no.1 Company and is in charge and involved in day to day affairs and management of the accused no.1 Company. It is further averred in the complaint that there was loan agreement along with the complainant through accused nos.2 to 6 and that is how, respondent no.1/original complainant Company had advanced loan of Rs.19,50,00,000/- to the accused Company. It is further averred in the complaint that the accused no.2 on behalf of accused no.1 through accused nos.2 to 6, having its account with the Axis Bank located at Phaltan, Maharashtra, had issued three undated but signed cheques totaling Rs.17 crore in favour of the complainant/Company with an understanding that the same may be used for repayment of dues of the complainant/Company. It is averred that because of non-payment of the loan, those cheques were deposited and those

were returned unpaid by the banker. Further there are averments regarding compliance of statutory provisions such as issuance of statutory notice etc. On the basis of these averments and material placed before it, with a reasoned order dated 3rd January 2019, the learned Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai, was pleased to issue process for the offence punishable under Section 138 of the Negotiable Instruments Act against accused persons including the present petitioner.

3 The learned counsel for the petitioner argued that mere bald allegation in the complaint that a particular Director was responsible for the conduct of business of the Company is not sufficient to issue process against such an accused person. He relied on the judgment of the learned Single Judge of this court in the matter of **Shobhagmal Bankatlal Maloo and Ors. vs. The State of Maharashtra and Another**¹. It is further argued that the Company is being wound up by following due process of law.

1 2016 ALL MR (Cri) 2555

4 I have considered the submissions so advanced and also perused the material placed on record. The complaint filed by the respondent/original complainant makes out ingredients of the offence punishable under Section 138 of the Negotiable Instruments Act. In the matter of **Gunmala Sales Pvt. Ltd. vs. Arun Mehta and Others**² it is held that if Director wants process to be quashed on the ground of bald averments and that he is not concerned with the issuance of the cheque, then he is required either to furnish some sterling incontrovertible material or acceptable circumstance to substantiate his contention to that effect. He has to make out a case that the trial before the learned trial court would result in abuse of process of court. It is held that complaint cannot be quashed merely on the ground that no particulars are given in the complaint about role of the Director because basic averment would be sufficient to send him for trial.

5 In the case in hand, material produced before the learned trial court is sufficient to proceed against accused persons. Age of the Director is of no relevance for issuance of

² MANU/SC/959/2016

process. The petition, as such, is devoid of merits. Therefore the order :

ORDER

The petition is rejected.

(A. M. BADAR, J.)