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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.771 OF 2018**

Ankit Jain,
Age : 30 years, Occ.: Service,
M/s. Vikram Computers, Shop No.1,
Kamath Building, Tara Temple Lane,
Lamington Road,
Bombay 400 007.

... Applicant

Versus

1. The State of Maharashtra
2. Prakash Jamnadas Khatri
375/377, Office No.14, First Floor,
Babu Building, Lamington Road,
Bombay – 400 007.

... Respondents

**WITH
CRIMINAL APPLICATION NO.790 OF 2016**

Prakash Jamnadas Khatri,
Proprietor of M/s. Venus Trading Co.
Through Constituted Attorney
Mr. Vijay Rajesh Khatri
Office No.14, Age 35 years,
1st Floor, Babu Building, Lamington Road,
Mumbai – 400 007

... Applicant
(Orig. Complainant)

Versus

1. M/s. Vikram Computers
Having its Office at Shop No.1,
Kamat Building, Tara Temple Lane,
Lamington Road, Mumbai – 400 007.
2. Pravin Popatlal Jain
Having its Office at Shop No.1,
Kamat Building, Tara Temple Lane,
Lamington Road, Mumbai – 400 007.

And residing at 302, Amarnath C.H. Society Ltd.
B Wing Sudama Nagar Bhayander (W), Thane.

3 State of Maharashtra ... Respondents
(Orig. Accused)

Mr. Rajender Singh Saluja i/b. Mr. Prakashbhai H. Israni for the Applicant
in APL/790/2016 and for Respondent in APL/771/2018.

Mr. Yashpal Thakur a/w Ms. Vidhya H. Dongre and Ms. Ashni Iyer for the
Respondent in APL/790/2016 and Applicant in APL/771/2018.

Ms. Veera Shinde, APP for the Respondent – State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 11th MARCH 2020.

PC.:

1 Rule. Rule made returnable forthwith with the consent of the
parties. Applicant in Criminal Application No.771 of 2018 is an accused in
C.C. No.1815/SS/2015 and is being prosecuted for an offence punishable
under section 141 of the Negotiable Instruments Act, 1881 on the basis of
the complaint filed by the applicant in Criminal Application No.790 of
2016.

2 Applicant in Criminal Application No.790 of 2016 had filed a
complaint contending therein that the accused no.1 is a proprietary firm,
accused no.2 is a proprietor of the said firm i.e. M/s. Vikram Computers. It
is alleged in the complaint that all the accused had acted in connivance

with each other and a cheque was issued which was not honoured on the given date. It was also contended that the accused nos.2 and 3 are responsible for the day-to-day affairs and/or working of the business of accused no.1 proprietary firm at all times.

3 Upon considering the contents of the complaint, the learned Magistrate, 14th Court, Girgaon, Mumbai had observed that the accused no.3 is the drawer of the cheque and that the accused no.1 is a Proprietor and therefore, process has been issued only against accused no.3 for an offence punishable under section 138 of the Negotiable Instruments Act. The applicant in Criminal Application No.771 of 2018 contends that the applicant herein is not the drawer of the cheque since the accounts were not maintained by the accused no.3 being a proprietary concern. The accounts of the said firm were not maintained by the applicant and that he was merely an authorised signatory of the said cheque and therefore, the applicant cannot be prosecuted under section 138 of the Negotiable Instruments Act which reads as follows :

“138 - Dishonour of cheque for insufficiency, etc., of funds in the account. — Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account

by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”

4 The learned counsel has placed reliance upon the judgment of the Hon’ble the Apex Court in the case of *Raghu Lakshminarayan Vs. Fine Tubes*¹. The learned counsel for the petitioner has drawn attention of this Court to paragraph 8 of the said judgment. It is contended that it is only the proprietor who would be concerned with the day-today affairs of the firm and that the Manager cannot be prosecuted, especially when he is not maintaining the accounts of the firm. It is also contended that the applicant herein cannot be prosecuted under section 141 of the Negotiable

1. AIR 2007 SC 1634

Instruments Act. In any case, in the present matter, the learned Magistrate has issued process against the accused only under section 138 of the Negotiable Instruments Act and not under section 141.

5 As against this, the learned counsel for the respondent submits that in the case of ***Raghu Lakshminarayan*** (cited supra), the facts were at variance inasmuch as the accused was not the signatory to the said cheques whereas in the present case, the applicant happens to be a signatory of the said cheque. It is also submitted by the learned counsel for the respondent that in the present case, the plea is recorded and therefore, the order of issuance of process cannot be quashed at this stage. It is also contended that the fact that whether the accused – applicant has sent the cheque in connivance with the proprietor or not would be a matter of adducing evidence and the said order cannot be quashed.

6 As far as Application No.790 of 2016 is concerned, the learned counsel for the applicant i.e. the original complainant is aggrieved by the fact that the process is issued only against the accused no.3 who happens to be the signatory of the cheque and no process is issued against the proprietor of the said firm although there is a specific averment in the complaint that the accused nos.2 and 3 were working in connivance. It appears from the records that the original complainant had filed Revision

Application No.871 of 2015 challenging the order of issuance of process against the accused no.3 only and excluding accused nos.1 and 2. The learned Sessions Judge vide order dated 18th April 2016 has been pleased to dismiss the revision application.

7 The applicant had drawn attention of the Sessions Court to sections 28 and 29 of the Negotiable Instruments Act. The said contention was turned down on the ground that process is issued against drawer of the cheque and it would not be necessary to consider as to whether liability of an agent needs to be taken into consideration.

8 In any case, accused no.3 is not an agent of the proprietary firm but is the authorised signatory of the said firm. The learned counsel for the applicant in Criminal Application No.771 of 2018 submits that both the Courts have not taken into consideration the judgment of the Hon'ble Apex Court in the case of ***Raghu Lakshminarayan*** (*cited supra*).

9 In view of this, the matter deserves to be remanded back to the 5th Court, Ulhasnagar for reconsideration. In the interest of justice, the learned Metropolitan Magistrate shall pass appropriate orders in accordance with law after considering the judgment of the Hon'ble Apex

Court in the case of ***Raghu Lakshminarayan*** (*cited supra*) and any other judgment, placed on record by the complainant. It is made clear that this Court has not gone into the merits of the matter.

10 The order passed by the Metropolitan Magistrate issuing process dated 22nd June 2015 is hereby quashed and set aside and remanded for reconsideration. The applications are disposed of. Rule is discharged.

(SMT. SADHANA S. JADHAV, J.)