

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.970/2019

Mrs. Veena Rao

An adult, Indian Inhabitant
residing at #38, “Veejai”,
1st Cross, Malleshwaram,
BANGLORE – 560 003.

..... **Applicant.**

V/s.

1.State of Maharashtra

Through Public Prosecutor,
1st floor, PWD building,
Bombay High Court,
Mumbai – 400 032.

2. Vistra ITCL (India) Limited

formerly known as IL & FS Trust
Company Ltd. Plot No.C-22,
G-block, Bandra Kurla Complex,
Bandra(East), Mumbai 400 051.

.... **Respondents.**

Mr.Subodh Desai a/w Sunil A. Vyas, Advocate i/b Dipti Das for
the applicant.

Mr.AR Patil, APP for the State.

Miss Deepika Prabhala, Advocate i/b Res Juris for respondent
no.2.

CORAM : A. M. BADAR, J.

DATE : 6th JANUARY, 2020.

ORAL JUDGMENT:

1. By this application under Section 482 of Criminal Procedure Code, the applicant/accused no.6 is challenging the order directing issuance of process against her for the offence punishable under Section 138 of the Negotiable Instruments Act, in a complaint filed by respondent no.2.

2. Rule. Rule returnable forthwith. Heard finally by consent of parties.

3. Learned counsel appearing for the petitioner drew my attention to Form No.DIR-11 and contended that the petitioner/accused no.6 was appointed as Professional Director on 30.09.2016 and she resigned from the Company on 19.09.2018. With this, it is argued that cheque was issued on 30.06.2018 and it was dishonoured on 26.09.2018. The learned counsel further argued that statutory notice issued by respondent no.2/complainant came to be replied on 01.11.2018 by stating that the petitioner/accused no.6 had put in her papers. Therefore, she has not been made liable for the offence.

4. As against this, relying on the *Judgment of this Court in Criminal Application No.1433/2018, with connected applications, in case of Kulwant Chauhan & Another Vs. State of Maharashtra and Another, decided on 23.9.2019*, learned counsel for the respondent No.2 contended that resignation of the petitioner/accused no.6 is being disputed by respondent no.2/original complainant for the reason that same is not in compliance with the provisions of Section 168 of the Companies Act. Learned counsel submitted that the petitioner herein has not produced Form No.32 and as such it can not be said that the resignation is accepted and acted upon by the Company. Therefore, in submission of learned counsel for the respondent no.2/original complainant, the application deserves to be dismissed.

5. I have considered the submission so advanced. If a Director of a Company wants process to be quashed on the ground of either bald averment or that he or she was not concerned with the issuance of cheque, such Director must either furnish some sterling uncontrovertible material or acceptable circumstances to

substantiate such contention.

6. In the case in hand, it is averred that the petitioner/accused no.6 had tendered her resignation and same was filed with the Company on 19.9.2018. This fact is sought to be demonstrated from Form No.DIR-11. However, Section 168 of the Companies Act, mandates the Board of Director and the Company to intimate the fact of resignation to the Registrar in such manner and within such time and within such form as may be prescribed. The petitioner herein has not produced Form no.32 disclosing the fact that resignation of the petitioner was accepted by the Board of Director on behalf of the Company and thereafter the Company has informed this fact to the Registrar of Companies.

7. Thus, the application is devoid of any substance and same is, therefore, rejected.

(A. M. BADAR, J.)

