

NSC.

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

CRIMINAL WRIT PETITION NO.3973 OF 2019

Parveen Kumar

Age : 58 years, Occ – Business

Residing at 604, C-24, Gold Green,

Yamuna Nagar, Oshiwara,

Andheri (West),

Mumbai – 400 058

...Petitioner

Versus

1. The State of Maharashtra

2. M/s. Protocol Marine Services Pvt. Ltd.

Through its authorized representative

Mr. Arvind Koraga Kotian

Having its office at 13, G. Neelkanth Garden,

Ground Floor, Near Govandi Station (East),

Mumbai – 400 088.

...Respondents

Mr. Mihir Gheewala i/b Mr. Aditya S. Mehta, for the Petitioner.

Ms. M. H. Mhatre, A.P.P for the Respondent No.1 - State.

Mr. Ashish Sharma i/b Mr. Vipin Sharma, for Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 7th SEPTEMBER, 2020

ORDER:

1. At the outset, learned counsel for the petitioner seeks leave to amend the prayer clauses. Leave granted. Amendment to be carried out during the course of the day.

2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned APP waives service on behalf of Respondent No.1 – State and learned counsel Mr. Ashish Sharma, waives notice on behalf of respondent No.2.

3. By this petition preferred under Article 227 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, the petitioner seeks quashing of criminal proceedings being C.C. No.82/SS/2016, pending before the learned Metropolitan Magistrate, 72nd Court, Vikhroli, Mumbai, initiated against him by the respondent No.2-original complainant.

4. Mr. Gheewala, learned counsel for the petitioner submits that despite the petitioner having resigned as a Director (independent and non-executive) from the accused Company - ‘Kanchan International Ltd and Kanchan International Limited’ on 22nd September, 2010, the petitioner has

been arrayed as an accused on the basis of a dishonoured cheque dated 1st June, 2014. Learned Counsel relied on 'Form – 32' in support of his submission to demonstrate that the petitioner had resigned from the said Company on 22nd September, 2010, much prior to the date of issuance of the subject cheque. He submits that summons were issued against the petitioner, only on the basis of the averments made by the Respondent no.2 in the complaint filed by him in the Court of the learned Metropolitan Magistrate, under Section 138 r/w 141 and 142 of the Negotiable Instruments Act, although the petitioner had resigned from the said Company much prior to the issuance of the cheque. Learned Counsel relied on the Judgment of the Apex Court in the case of ***Gunmala Sales Private Limited v/s Anu Mehta and Others***¹ and ***Anita Malhotra v/s Apparel Export Promotion Council and Others***². He submits that since there is no dispute about the petitioner's resignation on 22nd September, 2010 as well as Form – 32, there is no impediment in quashing the proceedings, *qua* the petitioner.

5. Learned Counsel for the respondent No.2 opposed the petition. The respondent No.2 has not filed any reply.

1 AIR 2015 SC 1072

2 AIR 2012 SC 31

6. Perused the papers. The respondent No.2 is the original complainant, who filed a complaint as against 'Kanchan International Ltd and Kanchan International Limited' (Accused Nos.1 and 2) and its Directors (including the petitioner) in the Court of learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai, being C.C. No.3309/SS/2014 (subsequently transferred to the Court of learned Metropolitan Magistrate, 72nd Court, Vikhroli, Mumbai and renumbered as C.C. No.82/SS/2016), for the alleged offences punishable under Sections 138 r/w 141 and 142 of the Negotiable Instruments Act. The respondent No.2 has averred in para 2 of the said complaint that accused Nos.3 to 11 (the petitioner is original accused No.11) are the Directors of the accused Nos.1 and 2 Company and as such are liable and responsible for the day to day affairs, business and transactions of the said Company. Pursuant to the said complaint, the learned Magistrate vide order dated 16th October, 2014, issued process against all the accused, including the petitioner.

7. Being aggrieved by the said order issuing process dated 16th October, 2014, the petitioner has filed the aforesaid petition under Article 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure and has sought quashing of the said complaint being C.C. No.82/SS/2016 *qua* the petitioner. The main ground on which quashing of

the proceedings is sought by the petitioner is the uncontroverted document i.e. Form – 32, which is at Exhibit - ‘C’ of the petition. A perusal of Form – 32 shows that the petitioner had resigned from the accused Company on 22nd September, 2010. It is pertinent to note, that the said document, Form – 32 has not been controverted by the learned counsel for the respondent No.2. Learned Counsel states that he has no document or any material to show that the petitioner, post his resignation, was in any way concerned with the said accused Company. The cheque dated 1st June, 2014, which was dishonoured, was issued by the accused Nos.1 and 2 Company, post the petitioner's resignation, forms the basis of the complaint.

8. The Apex Court in the case of ***Gunmala Sales Private Limited (supra)***, in para 33, clauses c) and d), has observed as under:-

33. *We may summarize our conclusions as follows:*

a)

b)

c) *In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about role of the Director in the complaint. It may do so having come across some unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or totally acceptable*

circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of the process of the court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed;

d) No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but, nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is

necessary qua a particular Director.

Similarly, in **Anita Malhotra (supra)**, the Apex Court had quashed the proceedings *qua* her, after considering that the appellant therein – Anita Malhotra had validly resigned from the Directorship of the Company in the year 1998 and that she could not be held responsible for the dishonour of the cheques issued in the year 2004.

9. As noted above, the petitioner has relied on the certified copy of Form – 32, which shows the date of resignation as 22nd September, 2010, almost 4 years prior to issuance of the cheque in question. Also as noted above, the said document has not been controverted by the respondent No.2 nor any document is brought on record to show that the petitioner continued to be concerned with the affairs of the Company, post his resignation in 2010.

10. In this factual backdrop and the legal position, continuation of the proceedings *qua* the petitioner will clearly be an abuse of the process of the Court. Accordingly, the Petition is allowed and the criminal proceedings being C.C. No.82/SS/2016, pending before the learned

Metropolitan Magistrate, 72nd Court, Vikhroli, Mumbai, initiated *qua* the petitioner is quashed and set aside. Rule is made absolute in the aforesaid terms.

11. All concerned to act on the copy of this order, digitally signed by the Private Secretary of this Court.

REVATI MOHITE DERE, J.