IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1485 OF 2018

ANITA LALWANI)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA AND ANR.)...RESPONDENTS

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Mr.Ravindra Suryawanshi i/b Ravi Suryawanshi and Associates Advocate for the Applicant.
Mr.S.V.Gavand, APP for State.
Mr.Hrishikesh Chavan, Advocate for respondent no.2.

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CORAM : A. M. BADAR, J.

DATE :4th FEBRUARY 2020

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally by consent.

2. Applicant who is accused no.5 in Criminal Case

No.10979/SS/2016 filed by respondent no.2 herein i.e. 'M/s Agricore Commodities Private Limited' is seeking discharge from the said proceedings for offences punishable under Section 138 r/w 141 of the Negotiable Instruments Act.

3. Heard learned counsel for applicant herein/accused no.5. He vehemently argued that on 20.6.2016, applicant herein/accused no.5 had resigned from accused no.1 Company namely 'Anil Mines and Minerals Private Limited'. It is demonstrated from the pleadings in the complaint that on 28.7.2016 Memorandum of Understanding came to be executed between respondent no.2 herein/original complainant and accused persons. From the complaint, it is pointed out that in pursuance to this Memorandum of Understanding, 12 cheques dated 20.8.2016, 31.8.2016, 10.9.2016, 20.9.2016, 30.9.2016 and 10.10.16 came to be issued which were subsequently dishonoured. My attention is drawn to the letter of resignation of 20.6.2016 signed by the applicant

herein/accused no.5 to accused No.1 Company. It is argued that applicant herein/accused no.5 retired from Directorship of accused no.1 Company with immediate effect on 20.6.2016 and this fact is also informed to the Registrar of Companies. My attention is drawn to Form No.DIR 12 annexed at page no.35 of the Paper book mentioning that applicant/accused no.5 resigned accused Company on 20.6.2016. With this, it is argued that even in another criminal proceedings, respondent no.2/original complainant had annexed this Form DIR-12 and this fact is well known to respondent no.2/original complainant. Paragraph 18 of complaint is pressed placed in service to demonstrate that resignation of applicant no.2 to the complainant.

4. It is submitted at bar that applicant/original accused no.5 is a young lady having medical problems. Her prospects of marriage are marred by pendency of criminal complaint against her. It is further argued that as it is clear

from the record that applicant/accused no.5 has resigned from the directorship of the accused company much before issuance of cheques in pursuance to Memorandum of Understanding, hence, process issued against her deserves to be quashed.

5. As against this, by relying on judgment in the matter of **A.R.Radhe Krishna Vs. Dasari Deepthi and Others, AIR 2019 Supreme Court 2518,** learned counsel for respondent no.2/original accused argued that unless some unimpeachable evidence of sterling quality is produced before this court showing that applicant/accused has no concern with transaction, she cannot be exonerated at pre-trial stage. Learned counsel for respondent no.2/original complainant argued that pleadings made in the complaint itself goes to show that paper formality of tendering resignation was done in order to create defence in criminal trial. For this purpose reliance is placed on paragraph 18 of complaint apart from letter dated 19.8.2016 signed by Wadia Gandhi and Company

to the Solicitor and Advocates of respondent no.2/ Complainant. With the aid of this letter, it is pointed out that the Solicitor firm had issued this letter on behalf of applicant/original accused no.5 on 19.8.2016 re-iterating Memorandum of Understanding in respect of payment terms for outstanding amount and therefore, it is argued that resignation sought to be relied on at the most can constitute defence of applicant/accused.

6. To support this contention reliance is placed on the judgment of this Court, in the matter of **Suhas Bhand and another Vs. State of Mahrashtra and another, 2009 0 AIIMR(Cri) 2614.**

7. I have carefully considered the submissions so advanced and averments made in complaint. Complaint is filed by respondent no.2/original accused against the applicant/accused no.5 and other accused persons. It is

claimed in the complaint that applicant is Director of accused no.1 Company and she alongwith co-accused looks after day to day business of accused no.1 Company. It is further averred in the complaint that applicant/accused no.5 alongwith co-accused requested the complainant to settle the dispute by entering into MOU and accordingly, that agreement came to be entered into between accused no.1 and complainant Company on 28.7.2016. Complaint mentioned that in pursuance of this MOU, various cheques came to be issued were ultimately dishonoured. In paragraph 18 of the complaint it is alleged by respondent no.2/original complainant that applicant/accused no.5 is giving lame excuse of having resigned as a director of accused no.1 with intent to shirk her liability to pay the amount demanded under the said notice.

8. Heavy reliance is placed by the applicant/accused no.5 on her letter of resignation dated 20.6.2016 and

consequent submission of Form DIR-12 with the Registrar of Companies. Section 168 of the Companies Act deals with resignation of Director. On receipt of such resignation the Board of Directors is required to intimate to the Registrar of Companies the fact of resignation of Director in such manner, within such time and in such form as may be prescribed. In addition, the Director who had resigned from the Company can also forward copy of his resignation alongwith the reasons to the Registrar within 30 days from the resignation in such a manner as prescribed. In case in hand, Form DIR-12 shows that it was applicant/accused no.5 who had informed to the Registrar of Companies factum of his resignation from the Company. Thus, this document produced by applicant/accused no.5 only reveals her intimation to the Registrar of Companies about resignation. However, applicant/accused no.5 has not produced Form 32 which would reveal the fact such as whether resignation of applicant has been accepted by the Board of Director of accused no.1/Company and that thereafter the company has accordingly informed the Registrar of Companies in respect of resignation of applicant/accused no.5.

9. Be that, as it may; in the pleadings made in the complaint itself, respondent no.2/original complainant has categorically mentioned that alleged resignation is lame excuse for shirking liability. At this juncture, it is apposite to quote paragraph 33 (ii) from the judgment of Division Bench in the matter of **Suhas Bhand and another Vs. State of Mahrashtra and another, 2009 0 AIIMR(Cri) 2614.** It reads thus;

> 33. A reading of these judgments makes for the following legal propositions with regard to the resignation of a Director of a registered Company.
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> (i) ....
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> (ii) If his resignation is not accepted or admitted by the complainant upon production of the certified copy of Form No.32, the accused would have to prove the truth of the contents of the said certified copy i.e. the factum of his resignation. Such accused cannot

be discharged simplicitor upon production of a certified copy of Form No.32.

10. Similarly, in paragraph 9 of his Judgment in the matter of **A.R.Radha Krishna (supra)** of the Hon'ble Apex Court has held thus;

> 9. Having heard learned counsel for the parties and carefully scrutinizing the record, we are of the considered opinion that the High Court was not justified in allowing the quashing petitions by invoking its power under Section 482 Cr.P.C. In a case pertaining to an offence under S.138 and S. 141 of the Act, the law requires that the complaint must contain a specific averment that the Director was in charge of and responsible for, the conduct of the company's business at the time when the offence was committed. The High Court, in deciding a quashing petition under S. 482 Cr.P.C. must consider whether the averment made in the complaint is sufficient or if some unimpeachable evidence has been brought on record which leads to the conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time. While the role a Director iin a company is ultimately a questionof fact, andn o fixed formula can be fixed or the same, the High Court must exercise its power under S. 482, Cr.P.C. when it is convinced from the material on record,

> that allowing the proceedings to continue would be an abuse of process of the Court.

11. In this view of the matter, it is clear that, if a Director of the Company wants process to be quashed then he or she must either furnish some sterling incontrovertible material or acceptable circumstances to substantiate contentions raised in that regard. Unless such material is forthcoming, process issued against accused for the offence punishable u/s 138 r/w 141 of the Negotiable Instruments Act can not be quashed. In case in hand, respondent no.2/original complainant has disputed resignation allegedly tendered by the applicant/accused no.5 with accused no.1 Company and in absence of Form No.32 it can not be said that such material constitute material of sterling quality to exonerate applicant at pre-trial stage.

12. In the result, it can not be said that the proceedings against the applicant are abuse of process of court or that the learned trial court committed an error in

issuing process in the complaint. Petition as such is devoid of merits and same therefore, is dismissed.

(A. M. BADAR, J.)