

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION (APL) NO. 223/2021**

**KHUSHABOO NARAYAN HEMNANI  
AND ANR.**

**} APPLICANTS**

**V/S.**

**SAI KRIPA STATIONER, NASHIK  
THROUGH THE PROP. RAJ JYOTI  
UTTAM SINGH AND ORS.**

**} RESPONDENTS**

**\* \* \* \***

Mr. Sachin Gite, Advocate for the applicants.

Mr. Sandeep Shinde i/by. Mr. Mayuri Karekar, Advocate for  
respondent no.1.

Mr. A.R. Patil, APP for State-respondent no.2.

**Coram : Sandeep K. Shinde, J.**

**Tuesday, 21<sup>st</sup> December, 2021.**

**P.C. :**

1. Heard Mr. Gite, learned Counsel for the  
applicants, and Mr. Shinde, learned Counsel for respondent  
no.1.

2. Applicants have been prosecuted for an offence  
punishable under Section 138 of the Negotiable

Instruments Act in Summary Criminal Case No. 6870/2018 filed by the proprietor of M/s. Sai Kripa Stationer (respondent no.1) herein. In the said case, learned 6<sup>th</sup> Judicial Magistrate First Class, issued process on 1<sup>st</sup> February, 2019. This order is assailed in this application.

3. Mr. Gite, learned Counsel for the applicants, on instructions, does not press the application on behalf of petitioner no.2-Miss. Geetika Narayan Hemnani-accused no.3. As such, petition is dismissed as against petitioner no.2.

4. In so far as petitioner no.1 is concerned, she is the daughter of petitioner no.2. She has been arraigned as accused, as a partner of M/s. Satguru Buildcon. Mr. Gite, learned Counsel for the applicant, would rely on the partnership deed dated 17<sup>th</sup> December, 2009 to contend that, petitioner no.1 is or was not a partner of M/s. Satguru Buildcon at any point of time. Additionally, Mr. Gite, would rely on the income tax returns, of M/s. Satguru Buildcon, to contend that, statement of particulars furnished by M/s. Satguru Buildcon in Form No.3CB under Section 44AB of the Income Tax Act, 1969 does not show that, petitioner

no.1 was a partner of M/s. Satguru Buildcon. Mr. Gite, would therefore urge that, petitioner no.1 has been arraigned as accused, erroneously.

5. Contradicting the arguments of Mr. Gite, learned Counsel for the respondent, Mr. Shinde submitted that, material on record, distinctly suggests active participation of the petitioner no.1 in the day-to-day business affairs of M/s. Satguru Buildcon, which according to Mr. Shinde, is evident from the Retirement Deed, which has been witnessed by the petitioner no.1. I do not find substance in this submission. It is rejected.

6. Thus, in consideration of the facts of the case, it is to be held that, petitioner being not a partner of M/s. Satguru Buildcon (drawer of the cheque) has been arraigned in subject case wrongly and improperly. In that view of the matter, the petition is partly allowed. As a result, the proceedings in Summary Criminal Case No.6870/2018 pending before the learned Judicial Magistrate First Class, Nashik, are quashed as against accused no.5.

7. Petition is allowed in the aforesaid terms and  
disposed of.

**(Sandeep K. Shinde, J.)**

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