IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3205/2021
ALONGWITH
WRIT PETITION NO. 3218 OF 2021

Mirang Manoj Patel ....Petitioner
V/s.
1. The State of Maharashtra
and anr. ...Respondents

* * *

Mr. Vivek Kantawala a/w. Mr. Amey Patil, i/by. Mr. Vivek M. Sharma, *Advocate for the petitioner.*

Mr. A.R. Patil, *APP for State-respondent no.1.*

Mr. Dinesh Kumar Dubey a/w. Mr. Tushar Agarwal, *advocate for respondent no.2.*

Coram : Sandeep K. Shinde, J.
Closed for Orders on : 13th October, 2021.
Pronounced on : 22nd October, 2021.

P.C. :

1. Heard Counsel for the parties.

2. The issue for determination is whether, petitioner being partner of defaulter-firm is vicariously liable for the activities of defaulter under Section 141 of the Negotiable Instruments Act.

3. Petitioner's contention is that, at the time when the offence was committed, he was not in charge of and was responsible for the conduct of business of the firm and therefore he has not incurred a liability under Section 141 of the Negotiable Instruments Act. It is argued that, in order to bring a case under Section 141 of the N.I. Act, the complaint must disclose necessary facts which makes a person liable.

4. Respondent no.2 proprietor of M/s. Swastik Metals & Alloys, had supplied goods worth Rs.11,90,384/- to M/s. Mirang Engineering Company, a partnership firm of which petitioner is a partner. Thirty cheques, all dated 11th April, 2019 in all, amounting to Rs.11,90,384/- and three more cheques, all dated 11th April, 2019 amounting to Rs.28,650/- were issued in the name of complainant's company by M/s. Mirang Engineering Co., in discharge of invoices/bills raised by the complainant. All these cheques were returned unpaid, whereafter respondent no.2 filed a Complaint Case No.4302379/SS/2019 and Complaint Case No.0002330/SS/2019 under Section 138 of the Negotiable Instruments Act. The learned Magistrate, after perusing the complaint, verification and documents on record and

after hearing the Advocate for the complainant issued summons in both the cases. Feeling aggrieved by the order issuing summons, accused no.4 has preferred these two writ petitions under Article 227 of the Constitution of India.

5. It is settled law that, Section 141 does not make all partners liable for the offence. In the case of Monaben Ketanbhai Shah and another V/s. State of Gujarat & Ors. (2004) 7 SCC page 15, the Hon'ble Supreme Court has held that, criminal liability is to be fastened on those who at the time of commission of offences were in charge of and responsible to the firm for conduct of business of the firm. Thus, primary responsibility is on the complainant to make necessary averments in the complaint, so as to make accused vicariously liable.

6. In the case in hand, the petitioner, his father and mother are partners. In para-4 of the complaint, it is averrred that accused no.1 is the partnership concern carrying on business at the address mentioned above and accused nos.2, 3 and 4 are partners of accused no.1 and they are responsible for the day-to-day management and affairs of accused no.1 and all of them were aware about the transaction, which the accused no.1 had with the complainant firm. Learned Counsel for the

appellant argued that, all cheques issued on 11th April, 2019 were signed and issued by accused no.2 and when returned unpaid on 15th April, 2019, the petitioner was out of India. It is argued that, the petitioner left to Canada on 22nd June, 2018 and returned on 30th May, 2019 and again left Canada on 10th July, 2019 and therefore, petitioner was neither active partner, nor had knowledge of sale-purchase transaction in question. The learned Counsel would rely on the averments in paras-6 and 7 to contend that, accused no.2 was in charge of and was responsible to the Company for conduct of business of the Company, since he was the person who had issued cheques. It is therefore argued that, petitioner had no direct involvement in the business of the Company. On this ground, learned Counsel for the petitioner, contends that, petitioner cannot be held vicariously liable for the alleged offence committed by the accused no.1-Company.

6. Per-contra, learned Counsel for the complainant, would submit that averments in para-4 of the complaint is specific, suggesting the role of the applicant in the conduct of business of the Company. He has invited my attention to reply of accused Company, to statutory notice issued by the complainant. I have perused it. Advocate Thakur, on behalf of accused-Company, in reply averred that, he replied notices,

as instructed by the petitioner. It is evident, that on instructions of the petitioner, Mr. Thakur, Advocate, sent a reply, stating material supplied by the complainant was defective and although, petitioner requested the complainant to return the cheques, cheques were deposited. Learned Counsel further pointed out, that even assuming, the petitioner was in Canada, when cheques were returned unpaid, however, the fact remains that, the goods in question were supplied to accused company between 17th April, 2018 and 22nd June, 2018 (11 invoices in Case No. 4302379/SS/2019 and one invoice dated 10th June, 2018 in Case No. 0002330/SS/2019). It is therefore argued that, there is sufficient material on record to imply that, petitioner was directly involved in the conduct of business of the accused-Company.

7. The averments in the complaint and documents on record, in no uncertain terms, lead to belief, applicant's involvement in the conduct of business of the company. Therefore, no interference is called for in the order issuing process against the petitioner in aforesaid two cases under Section 138 read with Section 141 of the Negotiable Instruments Act. Consequently, both the petitions are dismissed.

NEETA SHAILESH SAWANT
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Date: 2021.10.22 14:52:49 +0530

(SANDEEP K. SHINDE, J.)