IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 954 OF 2021
ALONGWITH
CRIMINAL APPLICATION NO. 955 OF 2021

M/s. S and S Wire Products
Through Vipulkumar Kartarchand
Bhutani and anr. .....Applicant
V/s.
M/s. Tristar Inter Continental
Pvt. Ltd. And anr. .....Respondents

* * * *

Mr. Manoj Harit h/f. Manoj Harit & Company, *Advocate for the applicant in both matters.*

Smt. S.V. Sonawane, *APP for State.*

<u>*Coram : Sandeep K. Shinde, J.*</u>

Tuesday, 16th November, 2021.

P.C. :

1. Heard.

2. Applicants are accused in Complaint No.1995/SS/2020 and 1996/SS/2020, filed by the respondent no.1 under Section 138 of the Negotiable Instruments Act.

3. These applications challenge, the “issue process order” passed in the aforestated complaints.

4. Complainant’s case in brief is that;

(i)applicant no.1 is a partnership firm and applicants no.2 and 3 are partners, both looking after the day-to-day affairs of the partnership firm,

(ii)that applicant no.2 had close acquaintance with the complainant. He faced financial crises and thus approached the complainant for financial aid for redeeming property mortgaged with Bank. He represented the complainant, that property would be sold once redeemed and would return the amount paid by the complainant to the bank for redeeming the mortgage.

(iii) Believing the representation made by the accused, the complainant agreed to advance and paid the mortgage money to Bank and mortgage was redeemed.

(iv) At the material time, the applicants had agreed to pay interest at the rate of 24% p.a.

5. Thereafter, applicant sold said property and issued two cheques (a)cheque no.412784 dated 1st July, 2020 for the sum of Rs.43,25,000/- and (b)cheque no.412785 dated 22nd June, 2020 for the sum of Rs.33,80,172/- both drawn on Shree Samartha Sahakari Bank Limited by the applicant no.1 (firm).

6. Both the cheques were signed by Vipal Kumar K. Bhutani (applicant no.2 herein) as a partner of firm.

7. Cheques were returned unpaid on “STOP PAYMENT” instructions.

8. Complainant issued statutory notice of demand to applicants on 21st August, 2020.

9. Notice was replied by the applicants on 31st August, 2020.

10. Applicant denied the transaction and contended that, cheques in question, were never drawn by them in complainant’s favour. They alleged, on 5th

August, 2020 complainant and his son, manhandled security and forcibly entered into the factory office of applicant firm and stole the papers lying on the table.

11. It is noteworthy to state that in para-7 of reply notice, the applicants have stated as under :

> *"7] My clients states that content of para-4 of your notice are devoid of facts and it is not true to say that my client ever promised or your client ever accepted to buy my clients above mentioned property for a consideration ofr Rs.75,00,000/- . That was never the intention between the parties, it was just an temporary mutual arrangement till accounts reconcile and settled and your client is aware of this fact."* (emphasis supplied)

These averments signify, alleged transaction was temporary arrangement till account was settled.

12. In para-10 of the reply notice, the applicants had averred and claimed that,

(a) they were not liable to pay any amount to the complainant;

(b) there were no legal dues and hence question of issuing cheques at the relevant time did not arise;

(c) that the cheques in question, duly signed by the applicant no.2, were misplaced in the year 2017 and this fact was informed to the bank to avoid misuse of those cheques.

13. As against aforestated defence, spelt out in the notice reply, it is worthwhile to note that, in the application before this Court, the applicants have alleged that the cheques in question were stolen by the CEO of (emphasized) the respondent-Company, Mr. Pawan Agarwal and his son, Karan Agarwal on 5th August, 2020. In para-10 of the application, applicants averred that the applicant no.2 had lodged a police complaint narrating the dates and events relating to stealing of aforesaid cheques by the complainant and his son. Complaint is at page no.26 of the paper-book.

14. I have perused the complaint dated 21st August, 2020. Before adverting to the contents of the complaint, it may be noted that, complaint was received by the Clerk, attached to the Office of Commissioner of

Police, Nashik. The acknowledgment does not bear the seal and stamp of the office of Commissioner of Police. It is interesting to note that, although the complaint was filed on 21st August 2020, the applicants in their notice reply dated 31st August, 2020 did not mention that they had lodged the complaint against the complainant on 21st August, 2020.

15. The aforestated allegation, that the complainant and his son had stolen unsigned cheques from their factory premises on 5th August, 2020, constitutes cognizable offence. Yet, applicants as it appears, did not pursue it. This conduct of the applicants is strange. This assertion contradicts not only the defence sought to be raised in the notice reply, but also averments made in para-10 of the application. <u>In the notice reply, the applicants had stated that, cheques were stolen in 2017 which were duly signed by the applicant no.2 and this fact was informed to the bank with instructions to stop the payment, whereas, in the police; complaint allegedly lodged on 21st August, 2020 the allegations were that blank cheques were stolen</u>. (emphasis supplied).

16. Be that as it may, under Section 138 of the Act, presumption will have to be made that every Negotiable Instruments was made or drawn for consideration and it was executed for discharge of debt or liability, once its execution is proved or admitted. What applicants are canvassing in these proceedings is their defence, which according to them, if considered and appreciated, would necessitate dismissal of complaint. I have commented, in foregoing paragraphs, that the complaint on which defence is sought to be founded on, i.e. police complaint, is 'questionable document'.

17. In consideration of the facts of the case, I have reason to believe, that the complaint filed with the Commissioner of Police, Nashik is questionable document. Reasons are that, firstly, it does not bear the seal of the office of Commissioner of Police; and in the second place, the applicants had not mentioned this fact in the reply notice dated 31st August, 2020.

18. Additionally, it may be stated that, cheques in question were drawn by applicant no.1, signed by applicant no.2. On comparison, signature on the cheques resembles to the signature on the "verification" of this

application. It is also apparent that, the name of the 'payee' seems to have been written in the same ink.

19. Thus, the defence sought to be raised by the applicant is apparently 'gross'. The written complaint dated 21st August, 2020 , in my view, is "questionable document". It calls for enquiry.

20. For the aforestated reasons, the Registry is directed to forward copy of the complaint allegedly filed by the applicant in the office of Commissioner of Police, Nashik on 21st August, 2020 to the Commissioner of Police, Nashik City. Whereupon Commissioner shall verify the authenticity of the complaint, action taken if any and submit report to this Court in a sealed envelope on/or before 13th December, 2021.

21. List the applications for verifying the compliance on 15th December, 2021 at 2.30 p.m for further order.

22. Both the applications are dismissed and disposed off accordingly.

23. List the appliation on 15th December, 2021 to verify the Report and further fix the matter under the caption "ORDER" at 2.30 p.m.

(Sandeep K. Shinde, J.)