

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 128 OF 2021

Rahul s/o Prakash Pant,
Aged about 45 years, Occ. - Service,
R/o Behind New Municipal Council
Office, Malkapur, Tq. Malkapur,
District – Buldhana.

.... **PETITIONER**

VERSUS

Dnyaneshwar s/o Sadugi Chopade,
Aged about 76 years, Occ. - Pensioner,
R/o Shivaji Chowk, Buldhana Road,
Nandura, Tq. Nandura, District - Buldhana.

.... **RESPONDENT**

Mr. D.I. Jain, Counsel for the petitioner,
Mr. A.V. Bhide, Counsel for the respondent.

CORAM : ROHIT B. DEO, J.

DATE OF RESERVING THE JUDGMENT : 09-09-2021

DATE OF PRONOUNCING THE JUDGMENT : 16-09-2021

JUDGMENT

Respondent-Dnyaneshwar s/o Sadugi Chopade instituted Summary Criminal Case 690/2014 alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (“Act” for short). He alleged that the cheque issued by Bhaichand Hirachand Rasoni Multistate Credit Co-operative Society, Jalgaon (society) in his favour, towards payment of the maturity amount of the

fixed deposit, was dishonoured and that notwithstanding the statutory notice, the amount was not paid, thus completing the offence.

2. Dnyaneshwar s/o Sadugi Chopade did not array the society as accused.

3. Accused 1-Rahul Prakash Pant is the petitioner, who was allegedly the Branch Manager, accused 2-Anant Shrikrushna Ingle was the Clerk, accused 3-Pramodkumar Bhaichand Raisonni was the President and accused 4-Sukhlal Shahadu Mali was the General Manager of the Society.

4. Accused 1-Rahul Pant ("accused" for short) sought dismissal of the complaint on the ground that in the absence of the society in the array of accused, the complaint was not maintainable. The learned trial Court was alive to the position of law that the complaint was not maintainable. However, the learned trial Court expressed helplessness since process was issued. The consideration reads thus :

"5. It is a matter of record that, said bank is not made accused in the complaint. Even though present application is silent on those aspects but during the course of arguments the accused have argued that, as the Bank is not made the accused in the matter, the complaint is not maintainable. On the contrary, the complainant has argued that, after taking

into consideration the facts and circumstances of the case, on 08-1-2015 this court has issued process against the accused hence, the complaint cannot be dismissed.

6. *It is true to say that, it was necessary to implead the Bank as an accused in the matter. There are judgments of Hon'ble Bombay High Court that, in these type of cases the legal entity i.e. Bank should be arrayed as accused. In absence of Bank there is a defect in the complaint. But, I am of view that, on 08-1-2015 this court has already taken the cognizance of the matter. The matter is fixed for recording complainant's evidence. This court cannot revert back at the initially stage. The trial has to proceed further. The present application is not maintainable before this court."*

5. In the teeth of the admitted factual position that the society is not impleaded as an accused, the continuation of proceedings against the employees and the President, is clearly an abuse of the Court.

6. A society registered under the Maharashtra Cooperative Societies Act is a body corporate in view of the provisions of Section 36 which read thus:-

"The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to acquit, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all such things as are necessary for the purpose for which it is constituted".

Section 141 of the Act which deals with the offences of companies reads thus:-

“(1) If the person committing an offence under section 138 is a company, every person who, at the time of offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act, has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm”.

7. Explanation (a) to Section 141 of the Act read with section 36 of the Maharashtra Cooperative Societies Act, provides that a

cooperative society is a company for the purposes of section 141 of the Act.

8. In *Aneeta Hada vs. Godfather Travels & Tours Private Limited*, (2012) 5 SCC 661, the Apex Court concludes thus:

“59. In view of aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agrawal does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada is overruled with the qualifier as stated in para 51. the decision in Modi Distillery has to be treated to be restricted to its own facts as has been explained by us hereinabove”.

9. The judgment of the Apex Court in *Aneeta Hada vs. Godfather Travel & Tours Private Limited* is followed by the Apex Court in *Charanjit Pal Jindal vs. M/s. L.N. Metalics* and it would be apposite to refer to the following observations in the said judgment:-

“11. From the aforesaid finding, we find that after analyzing all the provisions and having noticed the different decisions rendered by this Court, the three Judges' Bench arrived at the irresistible conclusion that for maintaining the prosecution u/s 141 of the Act, arraigning a company as an accused is imperative. Hence, in this case, we find no

reason to refer the matter to the larger Bench”.

“12. In the present case, only the appellant was impleaded as an accused. In that view of the matter, we are of the view that complaint with respect to the offence u/s 138 read with 141 of the Act was not maintainable following the decision in Aneeta Hada, [2012 ALL SCR 1424] (supra). We set aside the judgment dated 17.4.2010 passed by the Trial Court, order dated 27.5.2011 passed by the Appellate Court and the impugned judgment dated 9.11.2012 passed by the High Court of Orissa, Cuttaack in Criminal Revision No. 467 of 2011. The appellant stands acquitted”.

10. In the light of the authoritative articulation of law, in my considered view, the complaint is an abuse of the process of law and the proceedings are liable to be quashed.

11. The petition is allowed in terms of prayer clause -1, which reads thus :

“1. Quash and set aside the impugned order dated 05-3-2020 (Annexure-3) passed by the Judicial Magistrate First Class, Nandura, District – Buldhana in Summary Criminal Case 690/2014 and allow the application below Exhibit 71 in Summary Criminal Case 690/2014 (Annexure-2) dated 07-9-2019 in toto.”

JUDGE

adgokar