

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

CRIMINAL APPLICATION (APL) NO.349 OF 2017

1. Smt. Heena Mehta w/o Bhadresh Mehta,
Aged 58 years, Occupation: Household,
Resident of 402, Manju Veena Apartment,
2-A Narayan Dabholkar Road,
Off: Nepean Sea Road, Mumbai – 400 006.
2. Vishal Thakkar s/o Kantilal Thakkar,
Aged 40 years, Occupation: Business,
Resident of C-93, Venus Apartment,
Near Prakash School, Vastrapur,
Ahmedabad (Gujarat) – 380 054. **APPLICANTS**

...VERSUS...

1. The State of Maharashtra through
Police Station Officer, Narkhed,
District Nagpur.
2. M/s. Omkar Agrotech Pvt. Ltd.,
A Company said to be registered
under the Companies Act, through its
authorized Director Ramkishor
s/o Madanlal Khandelwal,
Aged 65 years, Occupation: Business,
Resident of Sawargaon Road, At and
Post Mogra, Tahsil Narkhed,
District Nagpur.
3. Bhadresh Trading Corporation Ltd.,
A company duly registered with the
Companies of Registrar, having its
registered office at 205, Majestic
Shopping Centre, 144, JSS Road,
Girgaon, Mumbai 440 004, through
its Managing Director Shri Bhadresh
Mehta. **NON-APPLICANTS**
RESPONDENTS

Mr. Akash Gupta, Advocate for Applicants.
Mr. N.R. Rode, APP for Non-Applicant 1/State.
Mr. S.V. Purohit, Advocate with Ms. Gauri S. Purohit,
Advocate for Non-Applicant 2.

CORAM: **ROHIT B. DEO, J.**
DATE: **4th MARCH, 2021.**

ORAL JUDGMENT:

The applicants are invoking inherent jurisdiction under Section 482 of the Criminal Procedure Code, 1973 ('Code') seeking quashment of the order dated 15.03.2017/18.03.2017 rendered by the Judicial Magistrate First Class, Narkhed in Summary Criminal Case 82/2017 whereby process for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (Act) is issued.

2. The short submission of the learned counsel Mr. Akash Gupta is that there is incontrovertible material, which is in public domain, to show that the applicants were not the Directors of non-applicant 3 company when the cheques in question were issued.

3. Mr. Akash Gupta points out that applicant 1 was the

Director of non-applicant 3 company from 21.05.2008 to 07.03.2016 and she resigned w.e.f. 01.03.2016. Applicant 2 was the Additional Director of non-applicant 3 company from 07.03.2016 to 10.08.2016 and he resigned vide resignation letter dated 10.08.2016. The applicants assert that the resignations were duly accepted by the Board of Directors of the company.

4. The applicants assert that the factum of resignation of applicant 1 was informed to the Registrar of Companies ('ROC') by submitting the statutory forms which were received by the ROC on 12.03.2016. The prescribed fees of Rs.600/- were remitted to the ROC on 12.03.2016. The statutory form and the receipt evidencing the payment of the fees, are annexed to the application.

5. It is further asserted that the factum of resignation of applicant 2 was similarly informed to the ROC and the statutory fees paid on 23.08.2016. The statutory form and the receipt evidencing the payment of fees is annexed.

6. Admittedly, the first cheque was issued on 15.11.2016, on which date the applicants were not the Directors of the company.

7. I adjourned the hearing to enable non-applicant 2 to rebut the assertions of the applicants on oath. A statement is made that non-applicant 2, who is the original complainant, does not intend to place on record rebuttal on oath.

8. The factum of resignations of the applicants, much prior to the issuance of cheque, shall have to be considered as an admitted position. Even otherwise, there is incontrovertible and unimpeachable material, in public domain, which would exclude the involvement of the applicants in the alleged offence. In this view of the matter, compelling the applicants to undergo the rigmarole of a trial which is bound to culminate in acquittal, would be an abuse of the process of law.

9. The order dated 15.03.2017 of issuance of process under Section 138 of the Act is quashed, to the extent of the applicants.

10. The application is allowed in the aforestated terms.

JUDGE