

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 188 OF 2021**

Deepak Badrinarayan Somani ...Applicant
Versus
The State Of Maharashtra And Ors. ...Respondents

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Shri. Shivam Laturiya i/b APS Law Associates, Advocate for the Applicant.

Shri. Vivek Patil a/w Amit Singh i/b Santosh Sawant, Advocate for Respondent No.2.

Shri A.R. Patil, APP for the Respondent – State.

**CORAM : PRAKASH D. NAIK, J.
DATE : 23rd AUGUST, 2022.**

PER COURT:

1. The applicant has challenged order issuing process dated 26th August, 2019 passed by the Court of learned Judicial Magistrate First Class, Court No-5, Ichalkaranji for an offence under section 138 of Negotiable Instruments Act (for short 'N.I.' Act) in summary Criminal Case No.2276 of 2019 and order dated 31st December, 2020 passed by the Court of learned Additional Sessions Judge Ichalkaranji rejecting the Revision Application No.3 of 2020 preferred by the applicant.

2. According to complainant, M/s Manav textiles is proprietary concern. The complainant is conducting business of purchase and sale of thread material. The accused are conducting business of

manufacturing clothes from thread and its sale. Accused No. 1 and 2 are residing together. They are jointly conducting business. Accused No. 2 is father of accused No.1. The transaction in question is jointly conducted by accused No. 1 and 2 with complainant. Both are jointly and individually liable for liability towards complainant. Both the accused had purchased thread material from complainant and acknowledged its delivery. The details are mentioned in the complaint. The accused had made part payment towards transactions. Towards the payment of purchase of goods, cheque bearing no. 546812 was issued by a proprietary concern Shree Riddhi Siddhi Fabrics signed by accused No. 1 dated 26.06.2019 for amount of Rs. 4,68,443/-. While issuing cheque, the accused had assured that, the cheque would be honored whenever presented for clearance. The complainant deposited the cheque for clearance with their bank. It was dishonored with remarks 'Funds Insufficient'. Demand notice was issued to accused on 13.07.2019. Notice to accused No. 1 was returned with remarks 'Not claimed. Return to sender.' Accused No. 2 received the notice. Complaint was filed.

3. Learned JMFC, court No.5, Ichalkarnji issued process vide order dated 26.08.2019 for offence under Section 138 of Negotiable

Instrument Act.

4. The applicant preferred Criminal Revision Application No. 3/2020 challenging the order of process before the Sessions Court, which has been rejected vide order dated 31st December, 2020.

5. Learned Advocate for the applicant has urged as follows:-

i. The applicant cannot be held responsible for dishonour of cheque.

There was no vicarious liability against the applicant.

ii. The applicant is not signatory to the cheque. Undisputedly the cheque was allegedly issued on behalf of the proprietary concern of Riddhi Siddhi Fabrics.

iii. The Sessions Court rejected the Revision Application, on the ground that the accused No.2 did not reply to demand notice immediately and therefore *prima facie* case is made out against the accused No.2/applicant.

iv. Merely on the ground that, the demand notice was not replied, the applicant cannot be prosecuted for an offence under Section 138 of the N.I. Act. There was no material before the Court to invoke section 141 of N.I. Act.

v. The impugned order of process was issued mechanically without application of mind.

vi. Reliance is placed on the decision of the Supreme Court in the case of ***Alka Khandu Avhad Vs. Amar Syamprasad Mishra and another***¹.

vii. The applicant received the notice from Advocate for respondent No.2 on 14.07.2019. Since the applicant is senior citizen, he could not go to his advocate to file reply within stipulated time. But nevertheless issued reply dated 28.08.2019. Adverse inferences drawn by Sessions Court on the ground that applicant did not reply and complied the term in notice is not tenable.

(viii) Applicant is not connected with M/s Ridhi Sidhi Fabrics.

6. Learned Advocate for Respondent No.2/complainant submitted that, the trial Court has proceeded on the basis of the material placed before the Court and *prima facie* case was made out against the applicant/accused. The averments in the complaint indicate the role played by the applicant. It is specifically stated in the complaint that, the accused No.1 and 2 are responsible for liability in respect to the cheque which has been dishonored. The representations were made by both the accused. Merely on account of the fact that the applicant is not signatory to the cheque it cannot be inferred that there was no liability qua the applicant. The applicant is the father of accused No.1. They

¹(2021) 4 Supreme Court Cases 675

were residing together. The transactions were executed by both of them. The notice was not replied by applicant within statutory period. The Sessions Court has rightly rejected the Revision Application. The defence urged by the applicant will have to be considered at the time of trial. The learned magistrate has rightly issued the process. No ground is made out for quashing the proceeding.

7. I have perused the complaint, impugned orders and the documents on record. On perusal of the complainant, it is apparent that the accused No.1 Shri Chandan Deepak Somani has been impleaded being proprietor of M/s Riddhi Siddhi Fabrics. The applicant/accused No.2 is father of accused No.1. Undisputedly the alleged liability is of proprietary concern. The applicant is not proprietor of Riddhi Sidhi Fabrics. He is not signatory to the cheque. The accused No.1 is the proprietary concern. The averments in paragraph No.2 of the complaint would not be sufficient to invoke vicarious liability under section 141 of the N.I. Act. There is no other material on record to indicate participation of the applicant in transactions and to hold him vicariously liable for dishonour of cheque. The learned Sessions Judge while rejecting the Revision Application has observed that, the applicant has not denied that, prior to filing complaint, notice was issued by

complainant and he received the same. The applicant did not reply notice nor complied the term of notice. If applicant is not having concern with transaction mentioned in the notice, he ought to have replied the notice. In the facts of this case, no adverse inference would have been drawn by Court against applicant. There has to be prima-facie material to hold the accused responsible for liability on account of dishonour of cheque. In the case of *Alka Khandu Avhad* (Supra), the Hon'ble Supreme Court observed that, a person who is signatory to the cheque, and the cheque is drawn by that person on account maintained by him for discharge of liability has been dishonoured commits offence under Section 138 of N.I. Act.

8. This is a fit case to exercise the powers under section 482 of Code of Criminal Procedure to quash the impugned proceedings.

ORDER

- i. Criminal Application No.188 of 2021 is allowed.
- ii. The impugned order dated 26th August, 2019 passed by learned J.M.F.C., Ichalkaranji, order dated 31st December, 2020 passed by learned Additional

Sessions Judge, Ichalkaranji in Criminal Revision
Application No.3 of 2020 and proceedings in C.C. No.
2276 of 2019 pending before court of J.M.F.C.,
Ichalkaranji quashed and set aside qua the Applicant.

iii. Criminal Application is disposed off.

(PRAKASH D. NAIK, J.)