IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2449 OF 2018

1. Meenakshi Shastry
2. Reena Divetia …Petitioners

Versus

1. Shah Steel Impex Private Ltd.
2. The State of Maharashtra ...Respondents

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Mr. Dinesh Purandare a/w Mr. Ronak Shah i/by Dhru & Co. Advocate for the Petitioners.

Mr. Kezer Kharawala i/by Lex Juris, Advocate for Respondent No.1.

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

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CORAM : PRAKASH D. NAIK, J.
DATE : 24th AUGUST, 2022.

PER COURT:

1. The Petitioners are prosecuted for offence under Section 138 of the Negotiable Instruments Act, 1881 (for short "N.I. Act") vide complaint filed by Respondent No.1 viz. C.C. No.76/SS/2017 which is presently pending before the Court of learned Metropolitan Magistrate, Mazgaon, Mumbai. The Petitioners were arraigned as accused Nos.4 & 5. The complaint was initially filed before the Court of learned Additional Chief Judicial Magistrate, Mirzapur, Ahmadabad. Process was issued against the accused vide order dated 26.08.2014 as per Section 138 r/w Section 142 of the Negotiable Instruments Act, 1881.

2. The complainant had alleged that, they are the Dealers in iron and steel material and the merchants, suppliers & commission agents in iron and steel material. The accused No.2 to 5 approached the complainant for purchase of various iron & steel products for various quantity. The complainant supplied PPGL, PPGI, GL, COILS materials vide Tax Invoice bearing No.43 dated 16.10.2022, 10.11.2012, 01.03.2013 and 14.02.2013 and the same is received by accused No.1- Company on 16.10.2012, 11.11.2012, 14.02.2013, 01.03.2023 & 01.01.02013. The accused failed to make the payment. After followup, the accused handed over Cheques bearing Nos.000148 for Rs.1,25,055/-, 00146 for Rs.14,64,615/-, 000147 for Rs.7,53,438/- all dated 10.03.2014 all drawn Bank of Baroda, Ahmadabad Branch, Gujrat. The complainant presented the said cheques for clearance with their bankers Union of India, Sant Tukaram Road, Mumbai. The said cheques were returned dishonoured with remark 'Insufficient Fund'. Notice was issued to accused. Complaint was filed.

3. The proceedings were transferred from the Court of Additional Chief Judicial Magistrate at Mirzapur, Ahmadabad to Court of learned Metropolitan Magistrate at Mazgaon, Mumbai.

4. Learned Advocate for Petitioners submitted that, the Petitioners are impleaded as accused Nos.4 & 5 alleging that, they

are the directors of accused No.1-company. They were not participating in day to day affairs of business of accused No.1. Both of them are ladies. They are related to accused Nos. 2 & 3. There are no sufficient averments in the complaint to invoke Section 142 of the Negotiable Instruments Act. The Petitioners are not attributed any role of participation in day to day affairs of accused No.1. The only statement appearing in the complaint is that they are directors of accused No.1 and looking after and responsible for day to day affairs of accused No.1. The notice issued to the accused pursuant to dishonour of cheque is barred by limitation. The cheques were dishonoured on 05.06.2014. The Bank Memo was received by the complainant on 06.06.2014. The demand notice was required to be issued within 30 days from the date of receipt of Bank Memo, however, it was issued on 07.07.2014. Thus, the complaint was not maintainable. There are interpolations in the complaint. The complaint does not mention that the memo regarding dishonour of cheque was received by complainant on 09.06.2014. The contention of the complainant that, return Memo was received on 09.06.2014 is after thought. The proceedings were transferred from Additional Chief Judicial Magistrate at Mirzapur, Ahmadabad to the Court of learned Metropolitan Magistrate at Mazgaon, Mumbai. In the complaint by applying white ink date of receipt of return memo was changed from 06.06.2014 to 09.06.2014. In the complaint, return memo, affidait of evidence, statutory notice, winding up notice it is asserted that return memo was received on 06.06.2014. Hence, complaint is not maintainable.

5. Learned Advocate for Petitioners had relied upon the decision of the Hon'ble Supreme Court in the case of *Pooja Ravinder Devidasani V/s. State of Maharashtra* reported in (2014) 16 SCC 1 and in the case of *Kamlesh Kumar V/s. State of Bihar and Another* reported in (2014) 2 SCC 424.

6. Learned Advocate for Respondent No.1 submitted that, the grounds urged by the Petitioners are based on disputed questions of fact. The Petitioners are directors of accused No.1. In the complaint it is specifically stated that, they are responsible for day to day affairs of accused No.1. The grounds urged by the Petitioners will have to be appreciated during trial. The complainant had deposited the cheques for clearance with their bankers, Union Bank of India on 05.06.2014 and said cheques were dishonoured on 06.06.2014. However, the fact of dishonour of cheque was conveyed by the Bank on 09.06.2014. The said fact is stated in the letter dated 10.07.2014 issued by Union Bank of

India. The grievance of the Petitioners that the date in the complaint has been corrected by applying white ink by changing the date to 09.06.2014, after the complaint was transferred from Gujrat Court to Mazgaon is not correct. Letter of Union Bank of India dated 10.07.2014 showing the date of receipt of return Memo from the bank as 09.06.2014 was part of complaint but it was mentioned in the list of documents at the time of filing complaint. The complaint was filed at Mirzapur Court and the letter dated 10.07.2014 was annexed with the complaint at the time of filing the complaint and not after filing of complaint or when the proceedings are transferred from Ahmadabad to Mumbai. The Petitioners had preferred Special Criminal Application No.1171 of 2015 before the High Court at Gujarat at Ahmadabad and the copy of complaint was annexed to the said application. Even in the said application filed before the High Court at Gujarat, wherein the certified copy of the complaint was obtained from the Court of Additional Chief Judicial Magistrate at Mirzapur, Ahmadabad is annexed and it bears the same correction at Paragraph – 4 of the complaint. The respondent had annexed the said application to their affidavit-in-reply. The grounds urged by the Petitioners are required to be appreciated during trial.

7. Learned Advocate for Respondent No.1 relied upon following decisions:-

(i) M/s. Munoth Investments Ltd. (2001) 6 SCC 582,

(ii) T. N. Newsprint & Papers Ltd. Vs. Lakshmi and Anr. (2004) 13 SCC 366;

(iii) Anup Jagdish Agarwal Vs. Nilkunj Lalit Shah & Ors. (2010) 3 Bom CR 167;

(iv) Kishore Sharma Vs. Sachin Dubey, order dated 03.09.2019 passed by Hon'ble Supreme Court in Criminal Appeal No.1325 of 2019.

8. One of the ground urged by the Petitioners is that, the demand notice was issued beyond the limitation prescribed under Section 138 of the Negotiable Instruments Act. It is contended by the Petitioners that, at several places it is stated that the memo of dishonour was received by complainant on 06.06.2014. According to Respondent No.1, Bank Memo was received on 09.06.2014. Reliance is placed on the letter dated 10.07.2014 issued by the Bank, wherein it is stated that, the cheques were returned to the complainant on 09.06.2014. The letter also specifies that the cheques were deposited from clearance on 05.06.2014 and the same were dishonoured on 06.06.2014. The submissions of the Petitioners with regards to the receipt of written memo and interpolation in the complaint are in the nature of disputed

questions of fact which cannot be considered at this stage. The decisions relied upon by the Petitioner indicate that, the statutory notice is required to be submitted within stipulated time. However, in the present case, the said fact is based on disputed questions. Such issue will have to be established during the trial. During the pendency of this Appeal, this Court vide order dated 03.10.2018 directed the Chief Metropolitan Magistrate, Mumbai to make an inquiry and submit that the report as to on what basis and under which provision of law and power, judicial clerk made the endorsement on the complaint after issuance of process on 20.10.2014 by the Chief Judicial Magistrate, Ahmadabad and on what basis and on which date correction were carried out. Thereafter, the learned Chief Judicial Magistrate conducted an inquiry and report was submitted to this Court. The report indicated that, show cause notice was issued to the Judicial Clerk. The inquiry report and the statement of the judicial clerk indicate that, the Union Bank of India vide letter dated 10.07.2014 was already in the complaint before Mirzapur, at Ahmadabad Court. The correction in Paragraph – 4 of the complaint was not carried out before the judicial clerk but it was corrected already prior to filing of complaint before the Court at Mumbai. Considering the aforesaid circumstances, the submission of the Petitioners on this ground cannot be considered at this debatable issue cannot be adjudicated in this petition. Such issue can be decided in trial.

9. The Petitioners are ladies, they are implicated being directors of accused No.1 – company. Except stating that, they are responsible for day to day affairs of accused No.1, no role is attributed to them. Apparently they are wives of accused Nos.2 and 3. There is no material to show their involvement in commission of offence under Section 138 of Negotiable Instrument Act. In paragraph 2 of this petition it is stated that, the respondent No.1 filed complaint under Section 138 read with Section 141 of Negotiable Instruments Act against accused No.1 company, Mr. Balkrishnan Shastry (Accused No.2), Mr. Matraya Divetia (Accused No.3), (the main directors of Grippon) and their wives (Petitioners). In the case of *Pooja Ravinder Devidasani V/s. State of Maharashtra* (supra) relied upon by the learned counsel for Petitioners it is observed that, for making a director liable, held, there must be specific averments against the Director showing as to how and in what manner they are responsible for the conduct of business of the Company. They are liable only if they were in charge of and were responsible to the company for the conduct of its business or if it is proved that offence was committed with

consent or connivance of, or attributed to any negligence on the part of the Director concerned. Simply because a person is a director of a company, does not make him/her liable under the N.I. Act. Mere verbatim reproducing words of Section without a clear statement of fact supported by proper evidence is not enough to make accused vicariously liable. On this ground, the proceedings are required to quash against the Petitioners. Hence, I pass the following Order :-

ORDER

i. Criminal Writ Petition No.2449 of 2018 is allowed.

ii. Impugned order issuing process dated 26th August, 2014 and the proceedings in C.C.No.76/SS/2017 qua the petitioners are quashed and set aside.

iii. Writ Petition is disposed off accordingly.

(PRAKASH D. NAIK, J.)