IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1370 OF 2021

Urvashi Kavita Palicha ...Applicant
Versus
The State of Maharashtra And Anr. ...Respondents

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Ms. Nishta Malik a/w Ms. Sonali Kochar i/by NAS Legal, Advocate for the Applicant.
Mr. R.P. Ojha, Advocate for the Respondent No.2.
Mr. A.R. Patil, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 22nd AUGUST, 2022.

PER COURT:

1. The applicant is facing prosecution under Section 138 of Negotiable Instruments Act, 1881 (for short 'NI Act') vide C.C. No.146/SS/2021 pending before the Court of learned 44th Metropolitan Magistrate, Andheri, Mumbai.

2. The brief facts of the complaint filed by Respondent No.2 are as follows :

a. The accused were friendly with the parents of the complainant. The accused No.1 is a family of company of accused Nos. 2 to 7. The accused Nos. 2 to 7 are the family members and directors / officers of accused No.1 company. The accused Nos. 2 to 7 are responsible and looking after day to day affairs of accused No.1 company. The accused Nos. 4 to 7 are also shareholders of accused No.1 company.

b. The accused Nos. 2 to 7 persuaded the complainant and his family members that accused No.1 is a good company engaged in the business of manufacturing products namely Easter Gum, Phenolic Resin, Melic Resin and Gum Resin.

c. The accused represented that the accused No.1 company is having turnover of approximately Rs.50,00,00,000/- (Fifity Crores). The accused persuaded and requested complainant and his family members to invest huge amount in accused No.1 company. The complainant and his family members allured by the fact that they would get interest at the rate of 1% to 1.5% per month. The accused represented that the investment is secured and they will issue the cheque for the invested amount to complainant which would be renewed after every three months.

d. The complainant invested the amount of Rs.35,00,000/- (Thirty Five lakhs) by cheque dated 14th September, 2015 and 8th March, 2017. To gain confidence of the complainant, the accused started giving cheque at the rate of 1% per month on amount of Rs.35,00,000/-(Thirty Five lakhs) on 14th of every month.

e. The complainant requested the accused to pay the interest of the loan amount. The accused failed to give cheque towards interest for the month of April-2022 till August-2020 on the amount of Rs.35,00,000/-(Thirty Five lakhs). The complainant demanded the money which they had deposited with accused Nos. 1 to 7 alongwith interest. Initially the accused made lame excuses. Thereafter, the accused gave cheque of interest at the rate of Rs.1.5% per month for September-2020 to November-2020 and also issued a cheque dated 14th October, 2020, bearing No.438217 for Rs.35,00,000/-(Thirty Five lakhs).

f. The complainant presented the cheque and the same was returned unpaid by complainant's bank vide return memo dated 15th December, 2020 for the reason funds insufficient.

g. The complainant sent legal notice dated 22nd December, 2020 demanding the amount of cheque. The notice was served upon the accused.

h. The accused Nos. 4 and 7 are active participant and managing day to day affairs of the company. The accused Nos. 4 to 7 are Officers incharge of accused No.1 company and controlling the affairs of accused No.1 company.

3. Learned Metropolitan Magistrate 44th Court, Andheri, Mumbai vide order dated 26th March, 2021 issued process against the accused for offence under Section 138 of NI Act.

4. Learned Advocate for the applicant submitted that the applicant cannot be prosecuted in the impugned proceedings. The applicant's father owns a company in the name and style of M/s Mahendra Rosin and Terpentine Ltd. The applicant was inducted as a Director. She was not participating or involved in day to day affairs of business of accused No.1 company. The applicant has resigned from applicant No.1 company on 20th May, 2017. Form No.DIR-12 clearly indicates about the resignation of the applicant on 20th May, 2017. The company had passed resolution on 20th May, 2017 accepting the resignation of the applicant as Director of the company. The resignation of the applicant was communicated to the Ministry of Corporate Affairs. The applicant is not a signatory to cheque. The applicant has never been involved in running business of the company. The applicant is a housewife. She has no legal capacity nor any role to play in accused No.1 company. Demand notice was not served upon the applicant. Cheque was dishonored on 15th December, 2020 and cause of action to initiate the proceedings under Section 138 of NI Act had occurred after the resignation of the applicant. There was no material to invoke Section 141 of Negotiable Instruments Act against the applicant.

5. Learned Advocate for applicant has relied upon the following decisions :-

i. Criminal Appeal 529 of 2017 and Special Leave Petition (Criminal) 10899 of 2015 Ashokemal Bafna vs M/s. Upper India Steel Mfg. & Engg. Co. Ltd. (06.03.2017) (2018) 14 SCC 202.

ii. Criminal Appeal nos. 360-377 of 2011 arising out of SLP (Criminal) nos. 3008 – 3025 of 2008 Harshendra Kumar D. Rebatilata Koley Etc. (08.02.2011) Supreme Court Reported Judgment.

iii. Criminal M. C. no. 1602 of 2020 Criminal Miscellaneous Appln. 9935 of 2020 High Court, Delhi (at New Delhi) Alibaba Nabibasha vs Small Farmers Agri-business Consortium & ors. (Dt.: 23.09.2020) 2020 SCC OnLine Del 1250.

iv. Criminal M. C. no. 1761 of 2009 High Court, Delhi (at New Delhi) Kamal Goyal vs United Phospherous Limited & ors. (Dt.: 4.02.2010) 2010 SCC OnLine Del 447.

v. Civil Writ Petition no. 1394 of 1992 High Court, Rajasthan Kana ram vs State of Rajasthan & ors. (Dt.: 16.12.1992)

vi. Writ Petition (criminal); Criminal Revision Application; Criminal Application no. 1738 of 2005; 255 of 2004; 4079 of 2005 High Court, Bombay Kiran Tulshiram Ingale vs Anupama P. Gaikwad & Ors. (Dt.: 25.07.2006)

vii. Criminal Appeal no. 2228 of 2014 arising out of SLP (Cri.) no. 1724 of 2013 Gunmala Sales P. Ltd., etc. vs Navkar Infra Projects P. Ltd & etc alongwith other Criminal Appeal (Dt.: 17.10.2014) REPORTED JUDGMENT.

6. Learned Advocate for Respondent No.2 submitted that order issuing process can be challenged by invoking revisional jurisdiction before the Court of Sessions. The applicant has alternate remedy of revisional jurisdiction under Section 397 of Cr.P.C. The plea of the accused is already recorded. There are sufficient averments in the complaint to show that the applicant was involved in day to day affairs of accused No.1 company. There are sufficient allegations in the complaint to invoke Section 141 of NI Act. The grounds urged by the applicant are based on disputed question of fact. The proceeding cannot be quashed on disputed questions by invoking Section 482 of the Code of Criminal Procedure. The resignation of the applicant is doubtful. The Respondent No.2 has filed Affidavit-in-reply. The website of Applicant No.1 company indicate that the applicant is Director of accused No.1 company on the date of cause of action. The learned Magistrate has issued process on being satisfied that *prima facie* case is made out against the applicant and other accused. The applicant is Director of accused No.1 company. The website of accused No.1 company defines the post and position of all the accused including the applicant. The said copy was annexed to the complaint filed by the Respondent No.2. The website shows that the applicant continues to be Director of accused No.1 company.

She is looking after international business of manufacturing unit of accused No.1 company. There is no infirmity in the order passed by the trial Court issuing process. The print of the website relating to the Board of Directors of accused No.1 company was obtained on 9th March, 2022.

7. Learned Advocate for the applicant submitted that the copy of website relied upon by the Respondent is of 2016. It is not the website of accused No.1 company. Rejoinder to the Affidavit-in-reply of Respondent No.2 has been filed stating that the applicant is daughter of Mrs. Veena Mahendra and Mr. Vinod Mahendra were announced the Board of Directors. She had resigned from company. The website of M/s. Mahendra Rosin and Terpentine Pvt. Ltd. was developed and published in 2014. The applicant was Director of said company at that time. She resigned on 20th May, 2017 and this factum of resignation is evident from the website of Ministry of Corporate Affairs. It is only the official website of Ministry of Corporate Affairs, the Respondent No.2 ought to have relied upon for acquiring particulars of names and contact of present Directors of company. The Respondent No.2 had gathered information about the applicant's maternal relationship with present Directors and about her past status of Director and maliciously added her party to the proceedings. The Respondent

No.2 has secured old web pages of company website and attempted to portrait the same as a source of information on status of her current directorship. Anybody can obtain the old pages of a website. M/s. Mahendra Rosin and Terpentine Pvt. Ltd. official website clearly shows that only two Directors are holding the said office namely Mr. Vinod Mahendra and Mrs.Veena Mahendra. The applicant has placed on record the printout of web pages of official website of accused No.1 company followed by other web pages. The applicant has relied upon the status of Directorship of applicant as on 19th June, 2017 is the Ministry of Corporate Affairs. The applicant has also relied upon copy of receipt of Form 12 issued by Ministry of Corporate Affairs which is also does not indicate that the applicant is Director of accused No.1 company as on 19th June, 2017. The applicant has also relied upon the certificate issued by the Company Secretary about submission of resignation to Ministry of Corporate Affairs by the company dated 16th July, 2022.

8. The applicant is impleaded as accused No.5 in the impugned complaint. The applicant is daughter of accused Nos.2 and 3. The submission of applicant is that, she had resigned from accused No.1 company on 20th May, 2017. The applicant's claim is supported by Form No.DIR-12 and resolution passed by the Board

of Directors of accused No.1 company accepting the resignation dated 20th May, 2017. The factum of resignation thus has been brought to the notice of Ministry of Corporate Affairs. The Respondent No.2 complainant has disputed the factum of resignation by relying upon the copy of website. It is pertinent to note that record of Ministry of Corporate Affairs and on the website of the accused No.1 company, it is clear that the applicant has ceased to be Directors of accused No.1 company on 20th May, 2017. The status of Directorship of the applicant is brought to the notice of this Court on the basis of extract of Ministry of Corporate Affairs, the copy of receipt of Form 12 received by Ministry of Corporate Affairs, Form No.DIR-12, certificate by Company Secretary dated 16th July, 2022 and copy of submission of resignation to Ministry of Corporate Affairs. These documents support the claim of the applicant that she is no more Director of accused No.1 company w.e.f. 20th May, 2017.

9. Thus, there is material of sterling nature which indicate that the applicant was not Director of accused No.1 company and not incharge and responsible for the day to day affairs of accused No.1 company on the date of dishonor of cheque and occurrence of cause of action to initiate the proceedings under Section 138 of the NI Act. She ceased to be Director of accused No.1 company on 20th

May, 2017. It is a settled law that the proceedings can be quashed on the basis of such material relied upon by the applicant/accused.

10. Although the order issuing process can be challenged by invoking revisional jurisdiction under Section 397 of Cr.P.C. before the Court of Sessions, there are several decision of the Apex Court that the powers under Section 482 of Cr.P.C. or under Article 227 of Constitution of India can be exercised by the High Court to quash the order issuing process or the criminal proceedings whenever, the Court is of the opinion that it would be abuse of process of law to continue such proceedings. Merely, on the ground that plea is recorded by the trial Court which is in most of the cases under Section 138 of the NI Act is recorded immediately after issuance of process and service of summons, this Court is not precluded from exercising its inherent powers under Section 482 of Code of Criminal Procedure. Thus, on the basis of material on record and the factual matrix the applicant cannot be prosecuted for the offence under Section 138 of the NI Act. The applicant had resigned on 20th May, 2017. The resignation was accepted. DIR-12 form supports the fact that the applicant had resigned and intimation was given to the Ministry of Corporate Affairs. The cheques were dishonored after the resignation of the applicant. Hence, the impugned order of process and the proceedings

deserves to be quashed and set aside.

11. Hence, I pass the following order;

ORDER

i. Criminal Application No.1370 of 2021 is allowed.

ii. Order issuing process dated 26th March, 2021 and proceedings in CC No.146/SS/2021 pending in the Court of learned Metropolitan Magistrate, 44th Court, Andheri, Mumbai, are quashed and set aside qua the applicant.

iii. Application stands disposed off.

(PRAKASH D. NAIK, J.)