IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4551 OF 2017

Vinay Vilasrao Kore ...Petitioner
Versus
M/s. Mahati Industries Pvt. Ltd. ...Respondents

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Mr. Anand S. Patil, Advocate for the Petitioner.

Mr. Prasanna Bhangale with Ms. Nikita Menon i/by Parinam Law Associates, Advocate for Respondent No.1.

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

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CORAM : PRAKASH D. NAIK, J.

DATE : 8th SEPTEMBER 2022

PC :

1. The Petitioner is prosecuted for an offence punishable under Section 138 of the Negotiable Instruments Act. The Petitioner has challenged the order issuing process passed by the learned Judicial Magistrate, First Class, Cantonment Court, Pune in Summary Criminal Case No.813 of 2016 and Order dated 27th July 2017 passed by learned Additional Sessions Judge, Pune in Criminal Revision Application No. 352 of 2016 for offence under Section 138 of Negotiable Instruments Act.

2. The case of the complainant is that, the complainant is registered company. Accused No.1 is limited company society

registered under the provisions of law. Accused Nos.2 to 14 are in charge of and responsible to the accused No.1 company for the conduct of business of the accused No.1/company. The accused wanted to enter into Build Operate Transfer (BOT) basis some Mini Hydel Projects and submitted the bid to Government of Maharashtra, Water Resources Department (GOMWRD) and was declared as successful bidder. Necessary development agreements were signed with GOMWRD and became entitled to develop certain projects at accused's costs. Accused invited bids for four projects. The complainant being in the business of import of components of Hydro Power Generating Systems and specialized in supply of various equipment of turbine, generators etc. and associated BOP electrical and mechanical components etc. and having experience in handling, loading, unloading, erection, tasting etc. and commissioning of such projects at the site applied for the tender and the accused awarded complainant the work vide executing contract agreement on 7th February 2007. The complainant commenced work awarded pertaining to the project and the accused have issued a certificate of completion of erection, tasting and commissioning etc. of the said Hydro Electric Projects. The amount of Rs. 3,11,80,113/- were due and payable by the accused to complainant and in discharge where of, the accused issued cheque No. 028938 dated 25th December 2015 amounting to Rs.3,11,80,113/-. Cheque was signed by chairman and secretary of the accused No.1 company. On depositing the cheque was dishonoured with reason 'fund insufficient' on 16th January 2016. Accused Nos. 1 to 14 through the chairman, vice Chairman, CEO, M.D., Directors, Secretary of the company so also accused No.2 being the Principal Patron of Warana group of companies/societies, made representations to complainant and acquired their faith. Complainant accepted the work, carried out the same and completed it relying upon the representations and out of the trust. The accused were having malafide intentions to cheat the complainant and after completion of work the accused Nos. 1 to 14 started avoiding the payment to the complainant. All the accused in their respective capacity acted with sole intentions to cause wrongful loss to the complainant and wrongful gain to themselves.

3. Vide order dated 6th June 2016 the learned Magistrate issued process under Section 138 of the Negotiable Instruments Act.

4. The petitioner preferred an Criminal Revision No. 352 of 2016 before the Additional Sessions Judge, Pune, The said application was rejected vide order dated 27th July 2017.

5. Learned Advocate for the Petitioner submitted that, there is no material to invoke vicarious liability against the petitioner. The averments made in the complaint are vague. The order issuing

process reflects non application of mind. The requirement to invoke section 141 of Negotiable Instruments Act is absent in the complaint. Learned Sessions Judge has rejected the Revision Application without appreciating the question of law. Learned Judge ought to have considered that after perusal of the entire complaint, there is absolutely no role is assigned to the Petitioner to invoke vicarious liability. Unless someone is having enforceable legal liability and/or concerned with the business of any drawer's transactions by holding any post or position in the said Sanstha, nobody can be held responsible under section 138 of N.I. Act. The allegations against the present Petitioner is that he is Patron of the entire Warana group/companies and complainant has kept inform about the progress of the work done. Therefore he is responsible for the alleged dishonour of cheque. For a moment assuming case of the complainant as true without admitting it, such allegations cannot be acceptable under the law. Otherwise for each transaction of any businesses, the head and/or owner of said business should be held responsible personally. The petitioner has neither had talk with the complainant about dishonour of cheque nor complainant himself informed him about it. All the allegations are vague and made only to show involvement of the petitioner. The complainant wanted to take undue advantage of position of the petitioner and his status in the society. The petitioner has neither signed the agreement nor the alleged cheque on any other documents concerned with the dishonor of cheque. The complainant has made similar allegations against all the accused. Most of them are no way concerned with the business of accused No.1 personally. They are holding different positions but it does not mean that they are responsible for alleged dishonour of cheque. It shows that the complainant intended to harass all the accused.

6. Learned Advocate for the Petitioner has relief upon the following decisions:-

(i) S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Anr.[1]

(ii) Pepsi Foods Ltd. and Anr. Vs. Special Judicial Magistrate and Ors.[2]

(iii) Mrs. Anita Malhotra Vs. Apparel Export Promotion Council and Anr.[3]

(iv) Pooja Ravinder Devidasani Vs. State of Maharashtra and Anr.[4]

7. The Respondent No.1 has filed affidavit-in-reply opposing the relief sought in this petition.

8. Learned Advocate for Respondent No.1 submitted that, the complaint was filed for offence under Section 138 of the Negotiable Instruments Act as well as Section 420 of Indian Penal Code. Specific

1 2005 CRI.L.J. 4140
2 (1998) 5 SCC 749
3 2012 Cri.L.J. 625
4 (2014) 16 SCC 1

overt act has been attributed to the petitioner. Learned Magistrate has issued process on the basis of prima facie opinion by considering the averment in the complaint. Cheque issued huge amount has been dishonoured. Petitioner was in-charge and responsible for the affairs of business of accused No.1. The averment reflected in the complaint are sufficient to invoke section 141 of the Negotiable Instruments Act. Learned Advocate for Respondent No.1 has relief upon the decision of this Court in the case of *Vijay Tata Ravipati Vs. Mediascope Publicitas (India) Pvt. Ltd. and Anr.*[5].

9. The cheque was issued by accused No.1. The petitioner is implicated as accused No.2. The petitioner is not described as chairman, vice-chairman, managing director or director of accused No.1/company. The accused No.3 is the chairman. Accused No.4 is the vice-chairman. Accused No.5 is managing Director. Accused Nos. 6 to 12 are the directors. Accused No.13 is the CEO. Accused No.14 is the secretary of accused No.1/company. From the tenor of the complaint it appears that, the complaint was filed invoking section 138 of Negotiable Instruments Act as well as section 420 of IPC. The averments in the complaint were directed primary towards the offence of cheating. In the complaint it is stated that, accused Nos. 2 to 14 are in-charge and responsible of the business for the conduct of business of accused No.1/company. Petitioner is not director or

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officer of accused No.1 company. In paragraph No.10 of the complaint it is stated that, the accused No.2 is the Principal Patron of Warana group of companies/societies. It is also stated that, he made representations to the complainant and acquired their faith. His averments are not sufficient to invoke vicarious liability under Section 141 of N.I. Act. It is pertinent to note that, the complainant has arraigned about 14 persons as accused in the complaint. Process was issued for offence under Section 138 of N.I. Act.

10. While issuing process vide order dated 6th June 2016 it is observed that, considering the material before the Court it prima facie appears that, the cheque was issued in the name of complainant and it was dishonoured when presented for encashment. Despite the legal notice, the accused failed to comply with the notice. In the aforesaid circumstances, there are sufficient grounds for proceedings against the accused. Process is issued for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Although, it is not necessary that, the order issuing process shall be elaborate but the tenor of the impugned order would indicate that, the learned Magistrate has not apply its mind in proper prospective to section 141 of Negotiable Instruments Act.

11. In the case of *Pooja Ravinder Devidasani Vs. State of Maharashtra and Anr.* (supra) It is held that, for making a Director

liable, there must be specific averments against the Director showing as to how and in what manner he/she was responsible for conduct of business of the company. Liable only if he/she was in charge of and was 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 was attributable to any negligence on part of the Director concerned. Simply because a person is a Director of a company, does not make him/her liable under Negotiable Instruments Act. Hence, mere verbatim reproducing words of section without a clear statement of fact supported by proper evidence, not enough to make accused vicariously liable.

12. In the case of Pepsi Foods Ltd. and Anr. Vs. Special Judicial Magistrate and Ors. (supra) it is observed that, the High Court can exercise its power of judicial review in criminal matters. Under Article 227, the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This Article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The powers conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while

invoking these powers. Learned Advocate for Respondent has relied upon the decision in the case of *Vijay Tata Ravipati Vs. Mediascope Publicitas (India) Pvt. Ltd. and Anr.* The said decision would not be applicable in the present case. Hence, the impugned order are required to be quashed and set aside.

ORDER

(i) Writ Petition is allowed and disposed off.

(ii) The order issuing process dated 6th June 2016 passed by Judicial Magistrate, First Class, Cantonment Court, Pune in Summary Criminal Case No. 813 of 2016 as well as order dated 27th July 2017 passed by Additional Sessions Judge, Pune in Criminal Revision Application No. 352 of 2016 are quashed and set aside qua the petitioner.

(iii) Proceedings in Summary Criminal Case No. 813 of 2016 pending before Judicial magistrate, First Class, Cantonment Court, Pune are quashed and set aside qua the Petitioner.

(PRAKASH D. NAIK, J.)