

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] No. 829/2022.

Ravi s/o Ghanshyamdas Lekhrajani,
A/a – 52 years, resident of Flat No.302,
3rd Floor, Kripanidhi, Gulmohar Cross
Road, No.4, Junu, Mumbai 400049. ... **APPLICANT.**

VERSUS

Gupta Coal India Private Limited,
(Formerly known as Gupta Coal
India Limited), through its
Authorized Signatory Shri Manish
s/o Lalchand Panjwani, resident
of C/o. Gupta Coal India Private
Limited, 4th Floor, Gupta Towers,
Temple Road, Civil Lines,
Nagpur 440001. ... **NON-APPLICANT.**

Mr. S.T. Madnani, Advocate for the Applicant.
Non-applicant - served.

CORAM : VINAY JOSHI, J.

DATE : SEPTEMBER 26, 2002.

ORAL JUDGMENT :

Despite effecting service on the non-applicant through

2

Court process, none appears for the non-applicant.

2. Heard finally the learned Counsel appearing for the applicant.

Admit.

3. The applicant is accused no.4 in Summary Case No.20256/2015, for the offence punishable under Section 138 of the Negotiable Instruments Act (N.I.Act). The applicant has challenged the order dated 18.11.2015, by which the process was issued against him for the offence punishable under Section 138 of the N.I.Act.

4. The challenge is on the ground that the applicant was a Nominee Director of accused no.1 Company and thus, he was neither in charge of the affairs of the Company, nor he was responsible for the conduct of the business of the Company. In support of said contention, the applicant has produced copy of Form no.32 issued under the Companies Act, to show that he was a mere Nominee Director of the Company.

5. It is argued that the applicant is employee of another

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3

concern namely Wayzata Indian Ocean Limited, who has lend money to the accused no.1 Company. Only for monitoring the affairs of accused no.1 Company, the applicant was made a Nominee Director of accused no.1 Company. Form No.32 also discloses the name of the Company who has nominated the applicant to the accused no.1 Company.

6. Perused the complaint, which bears a general statement that all accused are liable for the acts committed by the Company. Section 141 of the N.I.Act specifies that if the offence is committed by the Company, the person who at the time the offence was in charge of, and was responsible to the company for the conduct of the business of the company, is deemed to have committed the offences. Thus, by virtue of Section 141 of the N.I. Act, vicarious liability would attract to all the responsible persons of the Company. In that regard, there is no pleading in the complaint. Moreover, the applicant has brought on record that he was merely a Nominee Director appointed by another Company.

7. The learned Counsel for the applicant has submitted that

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the Non-executive Directors are not responsible for the conduct of the business of the Company. In this regard he relied on the decision in case of **Chintalapati Srinivasa Raju .vrs. Securities and Exchange Board of India - [2018] 7 SCC 443**, wherein it is held that the Non-executive Directors who are not involved in day to day affairs of running of the Company, are not responsible for the conduct of business. The complaint nowhere discloses as to how the applicant was in control of day to day affairs of the Company. Having regard to the said fact, the order of issuance of process is not legally sustainable.

8. In view of that, Criminal Writ Petition is allowed and disposed of. The impugned order dated 18.11.2015 passed by the Judicial Magistrate First Class, Nagpur in Summary Criminal Case No.20256/2015, regarding issuance of process is quashed and set aside, as regards the present applicant i.e. original accused no.4 only.

JUDGE