

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

CRIMINAL REVISION APPLICATION (REVN) NO.238/2019

Sanjay s/o Vijay Raut

...Versus...

Ashlesha Power Control Limited, Through its Managing Director, Bipin
Harnarayan Dhoot, Akola and another

WITH

CRIMINAL REVISION APPLICATION (REVN) NO.239/2019

Sanjay s/o Vijay Raut

...Versus...

Ashlesha Power Control Limited, Through its Managing Director, Bipin
Harnarayan Dhoot, Akola and another

WITH

CRIMINAL REVISION APPLICATION (REVN) NO.240/2019

Sanjay s/o Vijay Raut

...Versus...

Ashlesha Power Control Limited, Through its Managing Director, Bipin
Harnarayan Dhoot, Akola and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri Chetan Dhore, Advocate for applicant
Shri Amit Chutke, APP for respondent no.2/State

CORAM : AVINASH G. GHAROTE, J.

DATE : 16/06/2022

1. Heard Shri Chetan Dhore, learned Counsel for the applicant and Shri Amit Chutke, learned Additional Public Prosecutor for the respondent no.2/State in all revision

applications. None appears for the respondent no.1 though served.

2. All the revision applications, raise a common question and therefore, are decided by this common order. For the purpose of ready reference, the facts in Criminal Revision Application No.238/2019 are taken into consideration. The respondent no.1 - Company had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the NI Act" hereinafter) against the accused/present applicant in respect of dishonour of a cheque bearing No.0138355 dated 27/07/2011 in the sum of Rs.2,90,000/- drawn on Akola Urban Co-operative Bank, which when presented for realization, was dishonoured on account of insufficient funds, as a result of which, a demand notice dated 17/08/2011 was issued to the accused/applicant, the same having not been complied with, a complaint under Section 138 of the NI Act came to be filed. The learned Judicial Magistrate First Class, Akola by the judgment dated 29/03/2014 (pg.15) finding that the issuance of the cheque was not disputed and defence raised that the same was issued on account of security for supply of goods, which having not been proved, accepted the case of the complainant and convicted the applicant for the offence punishable under Section 138 of the NI Act and sentenced him to suffer Simple Imprisonment for one year and pay a fine of Rs.5,000/-, in

default, Simple Imprisonment for 15 days. A compensation amount of Rs.3,15,000/- was also directed to be deposited in the Court in seven equal installments within seven months. An appeal carried to the learned Sessions Court came to be dismissed by the judgment dated 30/08/2019 (pg.50) holding that the finding rendered by the learned Magistrate that the cheque was issued for legal liability and the defence as raised was not proved, did not call for interference.

3. Shri Dhore, learned Counsel for the applicant raises two grounds, first, that the accused carried on business in the name of Global Engineering Services and therefore, in absence of the said entity being made a party accused, the complaint was not maintainable. In support of his contention he relies upon the provisions of Section 141 of the NI Act and so also the judgments of the Hon'ble Apex Court in the case of *Aneeta Hada Vs. M/s. Godfather Travels and Tours Pvt. Ltd., 2012 Cri. L.J. 2525; Himanshu Vs. B. Shivamurthy, AIR OnLine 2019 SC 627* and *Ramesh Nagarkoti Vs. Kedar Datt Purohit, 2021 ACD 995 (UTR)* by a learned Single Judge of the Uttarakhand High Court. The second ground raised is that the reverse burden was put upon the accused for proving that the goods were not supplied, which was not justifiable and on both these grounds, the impugned judgments are sought to be quashed and set aside. No other grounds were raised.

4. Insofar as the first contention is concerned, it would be material to note that what is on record, as indicated by the impugned judgments, is that the applicant - Sanjay Vijay Raut has been shown as an accused in the complaint. This position was also shown in the notice dated 17/08/2011 under Section 138 of the NI Act, issued by the complainant which is at Exh.46, which has not been disputed at any point of time either by sending a reply thereto or otherwise. It is also material to note that the applicant - Sanjay Vijay Raut is shown as a proprietor of Global Engineering Services. It is a trite position of law that the firm name in a proprietorship concern is merely a name under which the proprietor does his business and does not constitute a separate entity whatsoever in any manner. Thus, a complaint filed against the proprietor of a proprietorship concern, in his personal name cannot be said to be infirm on the touchstone of the language of Section 141 of the NI Act. What is also material is to consider the language of explanation (a) and (b) to Section 141 of the NI Act, which for the sake of ready reference is reproduced as under :

“141. Offences by companies. — (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was incharge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

A perusal of explanation (a) and (b) to Section 141 of the NI Act, would indicate that what is included therein is a partnership firm and not a proprietorship concern for the reason that explanation (a) when it uses the word “firm” is in reference to “other association of individuals” and therefore, would indicate a partnership firm comprising of

two and more partners. This is further fortified by explanation (b) to Section 141 of the NI Act, which further indicates that the word “director” in relation to a firm would mean a partner in the firm. Thus, in my considered opinion, explanation (a) and (b) to Section 141 of the NI contemplate a partnership firm and not a proprietorship concern. The judgments relied upon by Shri Dhore, learned Counsel for the applicant, namely, *Aneeta Hada*, *Himanshu* and *Ramesh* (supra) all consider the situation, where the complaint was made against a company/partnership firm and not against a proprietorship concern and therefore, are of no assistance to the argument advanced by Shri Dhore, learned Counsel for the applicant. This being the position, in my considered opinion, the filing of the complaint against applicant/accused - Sanjay Vijay Raut, claiming him to be a proprietor of Global Engineering Services, cannot be said to be infirm or contrary to the mandate of Section 141 of the NI Act as Section 141 of the NI Act, on the facts of the present matter, is clearly not attracted.

5. That takes me to the consideration of the second contention that a reverse burden was put upon the applicant to prove that he has not received the material, for which, it is claimed by him that the cheques were issued as a security. The transactions between the complainant and the accused, are of a nature under which it is claimed that the accused used to take goods on credit from the complainant in respect of which

an account was maintained by the complainant. The ledger accounts of the accused as maintained by the complainant have been filed on record at Exh.36 and 37, and the certificate under Section 65 (b) of the Evidence Act is at Exh.39. In this context, it is necessary to note that the applicant/accused does not dispute the issuance of the cheques and the amounts, which are written therein, nor the fact that the cheques were issued in favour of the complainant. In his statement under Section 313 of Cr.PC. the accused admits that all the contents of the cheque are in his handwriting except the date. This being the position, by virtue of Section 139 of the NI Act, the presumption contained therein clearly stood attracted, as a result of which, the burden shifted upon the accused to substantiate the plea raised in defence that though the cheques were issued, the same were issued as a security for the supply of goods, which had not been so supplied. In this context, it is material to note that the accused has not entered into the witness box nor has examined any defence witness. The only reliance for this plea is placed upon the cross-examination of the complainant, in which, suggestions in regard to the above plea were given to CW-1, which have been denied by him. This, in my considered opinion, would not amount to discharge of the burden put upon the accused, so as to claim that the burden is shifted back to the complainant. That being the position, in my considered opinion, I do not see any reason to interfere in the well reasoned judgments of the

Courts below. No other argument was advanced. There is no merit in the criminal revision applications. The same are accordingly dismissed.

(AVINASH G. GHAROTE, J.)

Wadkar