IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1429 OF 2022

Narendra Bastimal Jain,
Age : 69 years, Occu. Doctor,
R/o. : Plot No. 6, Chandraprabha Colony,
Near LIC Colony, Ring Road, Jalgaon, 425001 .. Petitioner

Versus

1. The State of Maharashtra

2. Shri Santoshkumar Jain,
Age : 51 years, Occu. Business,
R/o. : Flat No. A-103, Metro Heights,
Ring Road No. 1, Telibandh, Behind Airtel Office,
Telibandh, Ravigram, Raipur,
Chhattisgarh – 492006. .. Respondents

Mr. Chandrakant P. Patil, Advocate for the Petitioner.
Mr. P. M. Kulkarni, APP for Respondent No. 1.
Mr. Rakesh N. Jain, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 17th FEBRUARY, 2023.

ORAL JUDGMENT :-

. Heard learned advocate for the petitioner, learned A.P.P. and learned advocate for respondent No. 2.

2. Rule. Rule made returnable forthwith. Taken up for final disposal by consent of the parties.

3. The petitioner/complainant has assailed the judgment and order passed by the learned Additional Sessions Judge, Jalgaon dated 25.05.2022 in Criminal Revision Application No. 93/2021. The learned Additional Sessions Judge by way of impugned judgment and order has quashed and set aside the order of issuance of process passed by the learned J.M.F.C. (8th Court), Jalgaon for an offence punishable under Section 138 of the Negotiable Instruments Act (for short "N. I. Act").

4. The facts in short are that, the petitioner lodged complaint bearing S.C.C. No. 6540/2018 in the Court of learned J.M.F.C., Jalgaon for the offence punishable under Section 138 r/w Section 141 of the N.I. Act wherein, the present respondent No. 2 is shown as accused No. 5 as a partner in the firm – accused No. 1 namely M/s. Jainam Builders, a partnership firm. The learned J.M.F.C. by order dated 16.07.2019 issued process against the respondent No. 2. The respondent No. 2 has challenged the order of issuance of process by filing Criminal Revision Application No. 93/2021. The main ground on which the revision was filed is that the cheque in question was issued on 27.08.2018 and the same was dishonored on 05.09.2018 whereas, it is specific case of the respondent No. 2 that, he stood retired from the partnership firm on 01.04.2017. The learned Additional Sessions Judge on this ground alone has quashed and set aside the order of

issuance of process. The petitioner is therefore before this Court. The learned Additional Sessions Court while deciding the revision application considered the date of resignation that is 01.04.2017 signed by all the parties.

5. Learned advocate for the petitioner vehemently argued that, the learned Additional Sessions Court could not have relied upon the documents produced by the accused at this stage. Assuming that, the partner has resigned, no procedure is followed under Section 72 of the Indian Partnership Act. Learned advocate relies upon the judgment of the Madras High Court in a case of **B. Narashimha Rao Vs. T. Raghavalu Naidu and Company** reported in **LAWS (MA)-2007-4-287**. He further relies upon the judgment of the Madras High Court in a case of **V. Sundaram Vs. E. Santhalingam** reported in **LAWS (MAD)-2004-3-340** wherein, the Madras High Court had considered the provisions of Section 72 of the Indian Partnership Act. Next judgment relied upon by the learned advocate for the petitioner is the judgment of the Hon'ble Apex Court in a case of **State of Orissa Vs. Debendra Nath Padhi** reported in **AIR 2005 SC 359** wherein, the Hon'ble Apex Court has held that the documents produced by the accused cannot be considered at the stage of discharge. The learned advocate submits that, thus, the accused does not have any right to produce the document except in the

trial.

6. Learned advocate for the respondent No. 2 relies upon the judgment of the Hon'ble Apex Court in a case of **Ashoke Mal Bafna Vs. Upper India Steel Manufacturing and Engineering Company Limited** reported in **(2018) 14 SCC 202**. He submits that, the documents produced by the accused can be considered. In that case, the Hon'ble Apex Court had considered that, while considering the liability under Section 141 of the N. I. Act, it needs to be construed and fastened on a person when there is specific averment in the complaint. It was a case for quashing of the complaint and the Hon'ble Apex Court had considered in that case that the cheque was dated 28.12.2004 when the appellant in that case was Director of Company. The accused has resigned as Director with effect from 02.01.2006 and the fact of his resignation has been furnished by Form No. 32 to the Registrar of Companies on 24.03.2006 in conformity with the rules and it is in that view of the matter the proceedings were quashed.

7. Another judgment relied upon by the learned advocate for respondent No. 2 is the judgment of the Hon'ble Apex Court in a case of **Harshendra Kumar D. Vs. Rebatilata Koley and others** reported in

<u>(2011) 3 SCC 351</u>. In that case also the accused had resigned from the company and that was accepted. The acceptance was communicated to the Registrar of the Companies and the Registrar of the Companies had issued a certificate. The Court has observed in paragraph No. 26 as below :

> "26. Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person that dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating tot he appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the appellant has resigned much before the cheques were issued by the company."

8. Thus, in that case, the documents were not considered and the petition was dismissed by the High Court. The Hon'ble Apex Court has accepted those documents by considering that the those documents were uncontroverted.

9. Learned advocate for respondent No. 2 submits that he had transaction in Bank of Baroda. He submits that the respondent No. 2 was authorized to operate the account and the cheque was deposited by the complainant for clearance in the Allahabad Bank whereas, an amount of Rs. 50,00,000/- (Rs. Fifty Lakh only) was deposited by

R.T.G.S. by respondent No. 2 in Bank of Baroda. This submission is clearly on the fact that cannot be appreciated at this stage and that by itself cannot absolve the respondent No. 2 from his liability.

10. Coming to the case in hand, it is only a deed of resignation executed by the respondent and his partners. There is nothing to show that it was duly submitted to the Registrar of Partnership Firm or that it was circulated in the widely circulated newspaper in the area as required under Section 72 of the Indian Partnership Act. Thus, in this case, it is clear that, the learned Additional Sessions Judge has accepted the document which could not have been seen at the stage of issuance of process or even at the stage of discharge as it is a matter of defence. The document produced by respondent No. 2 cannot be said to uncontroverted document so that the reliance can be placed at the stage of issuance of process. The learned Additional Sessions Judge has clearly committed illegality by accepting the document as it is and taking the same to consideration. Therefore, the impugned order deserves to be quashed and set aside. Hence, the following order.

ORDER

(I) The criminal writ petition is allowed.

(II) Rule is made absolute in terms of prayer clause (B).

(III) The learned Trial Court to proceed even against respondent No. 2 in S.C.C. No. 6540/2018 pending before the learned J.M.F.C., Jalgaon by following procedure.

(KISHORE C. SANT, J.)

P.S.B.