

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.2761 OF 2022

Olive Miles Hospitality LLP & Ors. ... Petitioners
V/s.
Swasti Hotels Pvt. Ltd. & Anr. ... Respondents

Mr. Anil Kumar Patil with Mr. Sachin Sonawane i/by
Mr. Rohan Barge for the petitioners.

Mr. R.D. Sani & Mr. Kasle i/by Pavan S. Vadgaonkar for
the respondent no.1.

Mr. A.R. Patil, APP for the respondent No.2/State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 31, 2023

P.C.:

1. The challenge in this petition is to the order of issuance of process in a complaint under section 138 of the Negotiable Instrument Act, 1881, mainly on the ground that the cheque was issued by “Olive Miles Hospitality” but the complaint is filed against “Olive Miles Hospitality LLP”.
2. According to him, therefore, the drawer of the cheque has not been arraigned as accused who according to the petitioner is Olive Miles Hospitality.
3. Learned advocate for the complainant invited my attention

to the paragraph 14 of the reply to the statutory notice. For the purpose of deciding the issue, it is necessary to consider paragraph 14 of the statutory notice which reads as under:

“14. At the outset my client state that he has started “Olive Miles Hospitality” in partnership which was formed in 2015 and cancelled in 2018. Accordingly, the said partnership account which was opened in the Federal Bank in name of Olive Miles Hospitality also closed. Thereafter my client formed new partnership firm named “Olive Miles Hospitality LLP” in the year 2017 and its operation account is in ICICI Bank. Your client knows this fact very well.”

4. In reply to the said notice, complainant raised dispute as under:

“14. With reference to para nos.13 and 14, My client categorically denies and disputes the allegations and contents of paragraphs 13 and 14. My client maintains his stand and reaffirms the contents of his legal notification dated 02/08/2021. Further, again my client strongly states that the cheque bearing no.162661 dated 2/07/2021 for Rs.78,00,000/- was handed over by your client to discharge his legal responsibility, as described in our notice dated 02/08/2021 and clearly mentioned in the preceding paragraphs. My client expressly denies having any knowledge that your client discontinued the previous partnership firm account in 2018 and that my client was aware of it, instead my client was not at all aware of this fact. Furthermore my client was completely uninformed that the accused had any previous firm under the same name since the accused never told the complainant about this. Here my client would like to emphasize that if the account was closed by your client long prior to the date of issuing the cheque, as per your version of events, it clearly indicates that your client knew fully well that the cheque could not be encashed due to the account closing. This clearly demonstrates his purpose to defraud my client by leading him to believe that he was maintaining the bank account and

that there was enough money in it to pay the cheque issued by him. As a result, this plainly fulfils the elements of the crime under Section 120(b), 420 r/w 34 of the IPC. Not only that, but your client's intentional retention of signed cheques from closed accounts, as you mentioned in your response letter dated 17/08/2021, plainly proves his fraudulent purpose, as the cheques would have been surrendered by your client to his bank at the time of account closure. Instead, he held those cheques on purpose with the intent of defrauding others, just as your client defrauded and cheated my client."

5. Careful reading of paragraph 14 of statutory notice and paragraph 14 of the reply, it appears that there is serious dispute about the contention raised as to whether Olive Miles Hospitality was formed in the year 2015 and cancelled in 2018 and new partnership firm name as Olive Miles Hospitality LLP was formed such disputed question of fact goes to the route of the matter.

6. The scope of petition under section 482 read with 227 of the Code of Criminal Procedure, 1973 and the Constitution of India, 1950 is to adjudicate based on admitted facts. One of the parameters for quashing the complaint is that the case for interference is made by accepting averments in the complaint as correct. It appears that there is serious dispute in relation to the averments in complaint that accused No.1 is drawer or not. Therefore, in the facts of the case, it would be in the interest of justice that the parties be given opportunity to lead evidence in support of their contentions. In the facts of the case, therefore, no case to interfere with in order of issuance of process is made out.

7. It is made clear that the Trial Court shall decide contentions of the parties uninfluenced by the observation made by this Court

in the order and in accordance with law.

8. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)