GRM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 17 OF 2023

Tridhaatu Maruthi Developers LLP & Ors. … Applicants

V/s.

Nirzari Rajiv Shroff & Anr. … Respondents

Mr. Javed Dhorajiwala, Mr. Mahesh Ahire i/b MZM Legal LLP, Adv. for the Applicants.

Mr. Hemang Jariwala a/w Shashvat Jariwala i/b Auroma Law, Adv. for Respondent No. 1.

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

CORAM : R. G. AVACHAT, J.

DATED : FEBRUARY 10, 2023

P.C. :

Heard.

2. The challenge in this application is to the order of issuance of process under Section 138 read with 141 of the Negotiable Instruments Act, 1881 against the applicants herein. The challenge is mainly on the ground that the respondent no. 1/original complainant has no *locus-standi* to file the complaint.

3. According to the learned Advocate for applicants, the complaint is silent to mention therein as to in what capacity the respondent has filed it.

4. Definition of term "Holder in due course" appearing in Section 9 of NI Act has been adverted to. This Court was also

taken through the averments in the complaint to submit that the respondent/complainant doesn't disclose as to what relation she had with the deceased, payee of the cheque. According to the learned Advocate, respondent/complainant has not filed the complaint, claiming to be a Class-I heir of the deceased-payee. She has not obtained Succession Certificate. Learned Advocate has relied on the following authorities to ultimately urge for issuance of notice in this matter :-

- **Jyotindra Motibhai Thakkar vs. State of Gujarat and Others** reported in **MANU/GJ/0927/2017**;
- **Ramashbhai Manibhai Patel and Others vs. State of Gujarat and Others** reported in **2011 SCC OnLine Guj 7608** and
- **Vishnupant S/o. Chaburao Khaire vs. Kailash S/o. Balbhir Madan** reported in **2010(3) Mh.L.J. 259**.

5. Learned Advocate for the respondent/complainant would on the other hand submit that the complainant is a widow of deceased-payee. The Statutory Demand Notice was issued by her to the applicants herein. None of them have replied to the said notice. The correspondence between the applicants and respondent/complainant would indicate that the respondent/complainant was a party/privy to the transaction. The applicants have addressed some of the letters in the name of respondent/complainant. Those have already been placed on record.

a. Learned Advocate has relied on the judgment of Hon'ble Apex Court in the case of **Shankar Lal vs. Sanyogita Devi (Dead) through LRs.** reported in **Criminal Appeal No. 485 of 2002 decided on 28/10/2009**, to ultimately urge for dismissal of the application.

6. Considered the submissions advanced. Perused the complaint and the documents relied on. Also gone through the authorities relied on by both the parties.

7. The cheque was issued in the name of Rajiv Chandrakant Shroff. The respondent/complainant claimed to be a widow of late Rajiv Shroff. It was she, who presented the cheque for encashment. On dishonour of the cheque, she issued the Statutory Demand Notice to the applicants herein. The applicants did not respond thereto. For better appreciation, the specific averments in paragraphs 5 to 7 of the complaint are reproduced hereinbelow :-

> "5. I say that Accused Nos. 1 to 4 approached my late husband Mr. Rajiv Chandrakant Shroff (who unfortunately expired on 23/04/2020) and me through Piramal Group wherein Mr. Nihar Shah of Piramal Group represented to us that an investment in the project of Accused No. 1 at Chembur would be very profitable with assured returns with exit policy and a flat as a collateral security.
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> 6. I say that thereafter Accused Nos. 2 to 4 through Accused No. 1 also assured the same to my late husband and me.
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> 7. I say that my late husband Mr. Rajiv Chandrakant Shroff received an e-mail dated 08/03/2016 from Nihar.Shah@piramal.com on behalf of Piramal Group and

> the accused persons, inviting us to invest in an exclusive investment with an assured exit option in Tridhaatu Shobha Aayu in Chembur, which stated that the investment amount would be 60 lakhs plus service tax with an assured return of 18% CAGR for a tenure of 24-36 months."

8. There are further averments in the complaint to suggest that the respondent/complainant and her husband had invested money with the applicants, who had assured to pay back the sum with interest @ 18% p.a. thereon. Issuance of cheque is not in dispute. It is reiterated that the respondent/complainant was a privy to the investment of money.

9. In the case of **Shankar Lal vs. Sanyogita Devi (Dead) through LRs.** (*supra*), the Hon'ble Apex Court has observed that

> "A complaint under Section 138 of the Act can be filed by the payee or, as the case may be, the holder in due course of the cheque.
>
> Can it be said that the respondent wife (since deceased) is not the 'holder in due course' of the cheque? In Muthuveeran Chetty vs. Govindan Chettyl a Full Bench of the Madras High Court observed that a person to whom the property in the negotiable instrument stands transferred by operation of law is entitled to sue on the note as such. It was held that the property in the promissory note can devolve upon the legal heirs of the deceased payees on the operation of law and that the absence of any endorsement or assignment did not affect the claim of the person suing. The Madras High Court rightly declared the law and held :
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> "It is clear that in so far as the modes of transfer of negotiable instruments are concerned, the Negotiable Instruments Act is not exhaustive and does not prevent

the passing of property in the note by operation of law. ...the property in the notes descended from father to son by operation of law and the son was, held entitled to sue on the notes."

It was further held that "it is not necessary for the person suing on the promissory note to rely only on an endorsement or such other mode as is provided for in the Negotiable Instruments Act and the suit by a person on whom the right devolves by operation of law cannot be defeated by absence of the endorsement."

The law applicable in respect of a promissory note would be equally applicable to a cheque as both of them are negotiable instruments within the meaning of the provisions of the said Act. It is clear from the definition of 'holder in due course' that 'holder in due course' means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer. The deceased Dhairyasheel Rao Deshmukh was undoubtedly the holder in due course of the cheque. The respondent, being the legal heir of the deceased, stepped into the shoes of her husband and has become the holder of the cheque in due course. All the rights possessed by the original holder of the cheque devolve upon the legal heirs by operation of Law. There is no provision in Negotiable Instruments Act prohibiting the legal heirs to file the complaint under Section 138 of the Act. The legal heirs of the holder in due course of the cheque are clearly entitled to rely upon the instrument and there is no provision in the Act which stands in the way of legal heirs initiating proper and appropriate proceedings as they step into the shoes of the original holder in due course of the cheque.

The High Court having considered the matter in the right perspective came to the right conclusion that there is no provision under the Act which precludes the legal heir of the holder in due course of the cheque to file compliant under Section 138 of the Act. In our opinion that a heir of the deceased holder in due course of the cheque can bring action on the basis of the cheque to recover the

> amount due thereon to the deceased holder by reason of the fact that he succeeds to the estate of the deceased holder by inheritance i.e. operational of law and if that be so there is no reason as to why the legal heirs cannot file complaint under Section 138 of the Act. There is, therefore, no reason on principle to hold that a complaint filed by a legal heir of the original holder in due course of the cheque cannot be taken cognizance by the Court. In our considered view, neither the cause of action nor the right conferred upon the holder in due course of the cheque to proceed and file complaint under Section 142 of the Act for the offence under Section 138 of the said Act comes to an end after the death of the holder in due course of the cheque. The cause of action certainly survives as the legal heirs step into the shoes of the holder of the cheque in due course by operation of law and are entitled to prosecute and initiate the proceedings under Section 142 of the Act.
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> For the aforestated reasons, the appeal is dismissed."

10. The facts in the case of **Shankar Lal vs. Sanyogita Devi (Dead) through LRs.** (*supra*), were

> "The Appellant having obtained a loan of Rs. 2,50,000/- (Rupees two lakhs and fifty thousand) from one Dhairyasheel Rao Deshmukh, issued five post dated cheques in the denomination of Rs. 50,000/- (Rupees fifty thousand) each in the name of Dhairyasheel Rao Deshmukh. The said Dhairyasheel Rao Deshmukh died. The Respondent being the wife and legal heir of the deceased Dhairyasheel Rao Deshmukh presented the cheques to the concerned bank and the same were dishonoured. Thereafter, the Respondent gave statutory notice to the Appellant for payment of the amount. The Appellant did not comply with the demand as required in the notice got issued by the Respondent. This was followed by a complaint, filed by the Respondent herein, Under Section 138 of the Negotiable Instruments Act, 1881 (for short "the Act") against the Appellant."

The aforesaid observations of Hon'ble Apex Court were in the context of the facts stated just hereinabove.

11. True, the authorities relied by the learned advocate for the applicants support their contention, those are the judgments of High Courts. It appears that the judgment of Hon'ble Apex Court in the case of **Shankar Lal vs. Sanyogita Devi (Dead) through LRs.** (*supra*), was not referred to and relied on in the judgments relied on by the learned Advocate for the applicants herein.

12. The averments in the complaint indicate that the respondent/complainant filed a complaint, as she came into possession of the cheque in a capacity of widow of the deceased Rajiv Chandrakant Shroff. It is further reiterated that none of the applicants responded to the Statutory Demand Notice. The respondent/complainant being widow of the deceased, by law of succession/inheritance, became payee/holder in due course of the cheque.

13. In view of the law laid down by the Hon'ble Apex Court in the case of **Shankar Lal vs. Sanyogita Devi (Dead) through LRs.** (*supra*), this Court is of the view that the present application is sans merit. The same is, therefore, dismissed and disposed of accordingly.

(R. G. AVACHAT, J.)