IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition No.998 of 2020

Parin Nandlal Bhavsar
having his address at:
A-3, Rashmi Bldg, Bhagyadarshini
CHS, Veera Desai Road,
Andheri West, Mumbai – 400 058 … Petitioner
(Orig.Accused No.3)

Versus

HDFC Bank Limited
a company incorporated under the
Companies Act, 2013 (existing
within the purview of companies
Act,1956) and having its registered
office at HDFC Bank House,
Senapati Bapat Marg, Lower Parel
(West) Mumbai -400 013 and having
one of its branch, Office situated
at Sandoz House, Dr.A.B Road,
Mumbai-400 018
through its authorized representative
Mr.Nadeem Ladji ... Respondent No.1
(Orig.Complainant)

2. State of Maharashtra ... Respondents

Mr Arun H. Mehta, Advocate i/b Akshar Laws, for the Petitioner.
Mr Girish Thanvi i/b Adv. Meghnath Navlani for respondent No.1.
Mr RM Pethe, APP for State.

Coram : R. N. Laddha, J.

Date : 13 December 2023.

P.C. :

Heard Mr Arun Mehta, the learned Counsel for the petitioner; Mr Girish Thanvi, the learned Counsel appearing on behalf of respondent No.1; and Mr RM Pethe, the learned Additional Public Prosecutor for the respondent/State.

2. The petitioner, who is accused in CC No.945/SS/2019, has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 (CrPC), to challenge and nullify the order dated 11.2.2020 passed by the learned Additional Sessions Judge, Greater Mumbai, in Criminal Revision Application No.1395 of 2019. The said order confirmed the order of learned Metropolitan Magistrate, 7th Court, Dadar, Mumbai, in CC No.945/SS/2019 dated 11.6.2019, whereby the learned Magistrate issued a process against the petitioner and others under Section 138 read with 141 of the Negotiable Instruments Act, 1881 (for short, the 'NI Act').

3. The complainant alleges that accused No.1 M/s Pramukh Car Riders Limited, formerly known as Jayabharat Automobiles Limited, is a Company whose day-to-day

affairs, management and operations are overseen by accused No.2 to 4, who are directors of the accused company. The petitioner/accused No.3 is a signatory of the disputed cheque.

4. The complainant alleges that in September 2005, accused No.1/company and accused No.2 to 4 approached them for grant of credit facility in the form of inventory funding to purchase vehicles. The complainant granted a credit facility of Rs.10 Crores, and the necessary documents were executed. The complainant renewed this credit facility on 10.2.2013 and 5.5.2017.

5. As a security measure, the accused provided undated cheques to the complainant and availed credit facility. Since there was an outstanding amount, the accused instructed the complainant/bank to deposit a cheque bearing No.002890 drawn on Bank of Baroda for sum of Rs.4,48,56,000/-. The cheque was already in possession of the complainant. In January, the cheque was presented for encashment, but it was dishonoured. After the necessary mandate, the complainant filed a complaint in the trial Court, which issued the process against the accused.

6. Mr Arun Mehta, the learned Counsel for the petitioner/ accused No.3 submitted that since the petitioner is a non-executive director of accused no.1 company, he cannot be held responsible for the dishonour of the cheque. He invited attention of this Court to Form 32 issued by the Registrar of company, which shows the status of the applicant at the relevant time.

7. The learned Counsel argued that the complainant's statement that all the directors are responsible is insufficient, and each director must be assigned a specific role. He further argued that although the cash credit facility was agreed upon, it was not actually provided. In 2013, when the inventory funding was renewed, the accused No.1 company issued a letter to the complainant requesting them to send their earlier undated cheque No.002890, which is the cheque in dispute. The complainant obtained an order of issue process by suppressing material facts. The accused issued another undated cheque bearing No.003982 for Rs.7.50 Crores by letter dated 23.7.2013. Therefore, the complainant should have mentioned in the complaint that they had received another cheque towards the cheque in question and that the accused had requested for the return of the cheque in

question. However, the complainant presented the same cheque. The accused company replied to the notice through advocate and raised this objection substantially.

8. On the other hand, Mr Girish Thanvi, learned Counsel for the respondent/complainant, submitted that the complainant has adequately described the role of each accused in the complaint. He stated that accused no.2 to 4 are the directors of accused No.1 company and responsible for the day to day affairs, management and working of the accused company. According to the learned Counsel, the mere fact that the accused demanded their cheque return as per the letter dated 23.7.2013, does not discharge the accused from liability. The cheque was given to the complainant towards a loan facility availed by the accused. The letter is required to be considered on merit and not at this stage. He further argued that there are certain presumptions in favour of the complainant under Section 139 of the NI Act, and it is for the accused to rebut the presumption. In his view, without a trial, it is not possible to rebut presumption that is in favour of the complainant.

9. In the present case, it is not in dispute that the cheque in question was dishonoured and that the petitioner accused is a

signatory to it. The accused had sent a notice to the complainant on 23.7.2013, asking for the return of the cheque in question as the accused had issued another cheque as security. However, the notice cannot be considered conclusive proof, and the accused cannot claim discharge based on it at this stage. The truthfulness of the notice can only be determined after evaluating the evidence adduced in the Court. Merely because the complainant did not refer to the notice dated 23.7.2013, it cannot be inferred that the complainant had concealed any material particulars that led the Court to issue process order.

10. In ***SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla*[1]*,*** it was observed by the Hon'ble Supreme Court that the signatory of a cheque which is dishonoured is concerned, is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141 of the NI Act.

11. In the present matter, since the petitioner/accused specifically refers to the point of time when the cheque was issued, role of the petitioner as the signatory of the cheque, presentation and dishonour of the cheque and failure to pay inspite of statutory notice, and the necessary averments are

1 (2005)8 SCC 89.

made in the complaint, the learned trial Court rightly issued the process against the petitioner accused.

12. Moreover, the scope of a writ petition challenging the issuance of process is limited to consider the allegations in the complaint. By catena of judicial pronouncements, the legal position to the effect is clear that the merits of the defence should not be considered at the stage of cognizance.

13. Resultantly, this criminal writ petition stands dismissed.

[R. N. Laddha, J.]