IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1350 OF 2020

Seema Vijay Wankhede …..Petitioner
Versus
Mukund Ramdas Rakte
and another .... Respondents

Mr. Sanjiv Sawant, Advocate i/b. Samir M. Suryawanshi, for the Petitioner.
Mr. Jitendra M. Pathade, Advocate for the Respondent No.1.
Mr. A.R. Patil, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 03rd AUGUST, 2023

P.C. :

1. The Petitioner is the original accused No.1 in SCC No.372/2016 before the learned Judicial Magistrate, First Class, Nashik Road. The complaint is filed by the Respondent No.1 herein for commission of the offence punishable under Section 138 of the Negotiable Instruments Act. The process was issued by the learned Magistrate. It was challenged by the Petitioner before the Additional Sessions Judge, Nashik in Criminal Revision Application No.7/2018. It was dismissed vide order dated 27.1.2020.

Under these circumstances, the Petitioner has approached this Court challenging both these orders.

2. Heard Shri Sanjiv Sawant, learned counsel for the Petitioner, Shri Jitendra Pathade, learned counsel for the Respondent No.1 and Shri A.R. Patil, learned APP for the Respondent-State.

3. The complaint was filed by the complainant against five accused. The first accused was a private limited company. The complaint describes the Petitioner as the Chairman of the said company. Apart from the company and the present Petitioner there were three other accused, including the Petitioner's husband. The complaint mentions that the accused met the complainant and induced him to invest in the subsidiary company of the accused No.1 company. The complainant invested Rs.32,15,440/- between February 2013 to 2014 and also invested Rs.29,90,000/- in another subsidiary company of the accused No.1 company. The investment was not returned and instead, in part payment of the dues, two cheques dated 4.1.2016 for the

amount of Rs.16,70,000/- and Rs.8,20,000/- were issued on the accused No.1 company's account maintained with Kotak Mahindra Bank, Thathe Nagar, Nashik. Importantly both these cheques were signed, according to the complainant, by the present Petitioner. The cheques were dishonored and that is the subject matter of the complaint.

4. Learned counsel for the Petitioner submitted that the Petitioner had resigned as a Director of the company w.e.f. 1.4.2014. Learned counsel for the Petitioner relied on an extract from the document of the Ministry of Corporate Affairs of Government of India mentioning that she had resigned on 1.4.2014.

5. Learned counsel further submitted that the notice issued by the complainant before lodging of the complaint was replied by the Petitioner and other accused, in which it was clearly mentioned that the Petitioner had resigned from the company and, therefore, she was not liable.

6. Learned counsel for the Respondent No.1-complainant opposed these submissions. According to him, the Petitioner was a signatory to the cheques. Her resignation is fraudulent. He submitted that the reply to the notice was not correct and it was created only to deprive the complainant of his rightful dues. He submitted that there are sufficient averments in the complaint against the Petitioner and she was signatory to the cheques. Therefore, the impugned orders are properly passed.

7. I have considered these submissions. The complaint mentions specific averments against the Petitioner. It is mentioned that all the accused, including the Petitioner, had incorporated a private limited company. The Petitioner was the Chairman of the said company and she was also the authorized signatory of the account of the company. The Petitioner and other accused were looking after the day to day affairs of the company and the company was controlled by all the accused, including the present Petitioner. The accused No.1 company had other sister concerns. The

complainant invested his amounts, as mentioned above, in the sister concern. It is further mentioned that when the complainant demanded back his dues from all the accused, including the present Petitioner, he was given false promises. It is specifically averred that the present Petitioner, in consultation with the other accused, issued the cheques which were the subject matters. When the cheques were dishonored because of insufficiency of funds, this complaint was lodged.

8. It is important to note that the cheques were not dishonored because the signature was not made by the authorized signatory but the cheques were dishonored because of insufficiency of funds. Therefore, it also means that the Petitioner was still the authorized signatory of the cheques when they were deposited. Moreover, there are specific averments specifying her role in the entire transaction and in the conduct of the affairs of the company as well as in issuance of the cheques. At this stage, these averments are sufficient for sustaining the prosecution

against the present Petitioner. There is also a reference to the reply given by all the accused, including the present Petitioner regarding the alleged resignation of the Petitioner from the company in the year 2014. All these disputed questions are triable issues, which the parties can refer to after leading evidence in the trial. At this stage, there is sufficient material against the Petitioner so that the trial can proceed against her.

9. In view of this discussion, I do not see any reason to interfere with the impugned orders. Consequently, the Petition is dismissed.

(SARANG V. KOTWAL, J.)