AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.377 OF 2022

Vanamaali Infra Pvt. Ltd. & Ors. … Applicants

V/s.

Infrastructure Design Consultants
Pvt. Ltd. & Anr. … Respondents

Mr. Siddhesh Bhole with Mr. Ahmed Padeja i/by Mr. Arjun Singh Thakur for the applicants.

Mr. Avinash Fatangare for respondent no.1.

Mr. Arfan Sait, APP for respondent no.2/State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 29, 2023

P.C.:

1. The applicants are original accused who have challenged order of issuance of process and order of payment of interim compensation under section 143A of the Negotiable Instruments Act, 1881 (hereafter "NI Act", for short).

2. In so far as prayer clause (c) which relates to payment of interim compensation is concerned, undisputedly accused nos.2 and 3 are the directors of accused no.1/company. This Court by order dated 8th March 2023 in a group of matters, lead matter being Criminal Application NO.886 of 2022 (**Lyka Labs Limited & Anr v. The State of Maharashtra & Anr.**) has held that the authorised signatory of a company, either director or employee is not drawer within the meaning of section 143A and, therefore, no direction for payment of interim compensation can be issued against the directors of a company. The impugned order, therefore, to the extent it directs directors to pay interim compensation of 20% of the cheque amount needs to be set aside.

3. In so far as liability of accused no.1 is concerned, according to the applicants, the order does not contain sufficient reasons. On perusal of the impugned order, the Magistrate has not only considered prima facie case but has considered all facts which are necessary to constitute prima facie offence under section 138 of the NI Act. Based on such prima facie satisfaction direction of payment of interim compensation of cheque cannot be faulted on the ground of insufficient reasons.

4. In so far as validity of order of issuance of process dated 30th January 2021 is concerned, according to the applicants, accused no.3 is housewife and is not responsible for day-to-day affairs of accused no.1/company. To consider such facts, averments in the complaint are required to be seen. The complainant in paragraph 2 of the complaint has averred thus:

> "2. The Accused no.1 is a Company duly registered under the provisions of Companies Act, 1956 as amended till date. The Accused no. 2 and 3 are the Directors of the accused no.1 Company who have committed an offence under section 138 of Negotiable Instrument Act. The complainant states that, all deicsiions of accused no.1 company are taken by the accused no. 2 and 3 as such Accused no. 2 and 3 are managing day to day affairs of accused no. 1 company."

5. Reading of paragraph 2 of the complaint makes it clear that such averments are sufficient to proceed against the directors under section 141 of the NI Act. Therefore, the order of issuance of process cannot be faulted.

6. Learned advocate for the applicants submits that there is no independent discussion by the Magistrate to arrive at conclusion of payment of 20%. In the facts of the case, considering the findings recorded by the Trial Court, in my opinion, no interference can be made on the ground of lack of reasons while arriving at quantum of compensation of 20%

7. For the aforesaid reasons, Rule is made absolute in terms of prayer clause (c) to the extent of accused nos.2 and 3. However, it is made clear that the application *qua* applicant no.1 against order of payment of interim compensation dated 27th November 2021 stands dismissed.

(AMIT BORKAR, J.)