

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1097 OF 2022

Gidugu Venkataswara Rao and anr ... Petitioners

vs.

State of Maharashtra and anr ... Respondents

Ms. Shaheen S. Kapadia for the Petitioners.

Mr. Arfan Sait, APP for the Respondent-State.

Mr. Vikrant Shetty for Respondents No.2.

CORAM : AMIT BORKAR, J.

DATED : MARCH 09, 2023

PC.:

1. The Petitioners are accused nos.3 and 4. The complaint under Section 138 of Negotiable Instrument Act, 1881 has been filed against the Petitioners and ors. In paragraph 4 of complaint, the Petitioners have been described as the partners of accused no.1 – Partnership Firm (Rallis India Ltd). It is stated in paragraph 4 of complaint that the Petitioners are in-charge and responsible for day to day affairs and conduct of business of accused no.1. The Magistrate by order dated 1st December, 2021 issued process against the Petitioners. The Petitioners therefore have filed the present Petition challenging complaint bearing SCC/784/2021 pending before the 5th Judicial Magistrate, F.C. Vashi, Belapur, Navi Mumbai.

2. Learned advocate for the Petitioners has *inter alia* raised two contentions; (i) that the demand notice has not been served on the Petitioners, (ii) that the Petitioners are not in-charge of and responsible for day to day affairs of accused No.1 – Partnership Firm.

3. Insofar as the service of notice on accused is concerned, the said issue as being question of fact needs to be decided at the time of trial of complaint.

4. As far as issuance of process is concerned, the Court would be bound by the statement made in complaint.

5. Paragraph 16 of complaint states that the accused has replied to the Statutory Notice. Therefore, the submission about non service of complaint cannot be accepted at this stage. However, it will be open for the Petitioners to raise such a contention at the time of trial.

6. The next contention of the Petitioners is that they are not in-charge and responsible for day to day affairs of the Partnership Firm. In paragraph 4, it has been specifically averred that the accused Nos.3 and 4 are partners of accused no.1 and in-charge of day to day affairs and conduct of business of accused no.1 and having common address as mentioned in the cause title of the said complaint. In my opinion, such averment in the complaint is sufficient, at least for issuance of process.

7. The last contention is to the effect that the cheques were issued as security. Whether the cheques were issued for consideration or as security is the matter of fact which needs to be adjudicated upon at the time of trial. The Apex Court in the case of ***Sunil Todi v. State of Gujarat***¹ has held that mere issuance of cheque as a security is no ground for acquitting the accused when the legally enforceable liability is aggrieved in the complaint. Whether the cheque has been issued for legally enforceable liability, is a matter of fact which has to be decided at the time of trial.

8. Since, the issues raised by the Petitioners being questions of facts, the order of issuance of process or the filing of complaint cannot be assailed on that ground.

9. There is no merit, Writ Petition is dismissed.

(AMIT BORKAR, J.)

¹ Criminal Appeal No. 1446 of 2021