IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2093 OF 2023

Naman Tushar Joshi & Anr. ..Petitioners
Versus
State of Maharashtra & Anr. ..Respondents

Ms. Siddhi Bhosale a/w. Chinmaya Acharya a/w. Aditya Rai a/w. Nitin Rai i/b. Ramchandra S. Rane for Petitioners.

Mr. A. R. Patil, APP for State/Respondent No.1.

Mr. Dipen Furia a/w. Harsh Kesharia i/b. M/s. Shah and Furia Associates for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 6 JULY 2023

PC :

1. Heard Ms. Siddhi Bhosale, learned counsel for the Petitioners, Shri. Dipen Furia, learned counsel for the Respondent No.2 and Shri. A. R. Patil, learned APP for the State/Respondent No.1.

2. Rule. Rule is made returnable forthwith with consent of the parties.

3. The Petitioners are the original Accused Nos.3 and 4 in C.C.No.3785/SS/2023 before the Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai. The Respondent No.2 has initiated this prosecution U/s.138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I.Act').

4. Learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai, vide his order dated 23/09/2022 issued process against the Petitioners and two other accused for commission of offence punishable under section 138 r/w. 141 of the N.I.Act. The Petitioners had challenged that order before the Additional Sessions Judge, Greater Mumbai vide Criminal Revision Application No.1051 of 2022. That Revision Application was dismissed vide the order dated 10/05/2023. The Petitioners have challenged both these orders in the present petition.

5. The case of the complainant i.e. Respondent No.2 herein is that the Accused No.1 M/s. Amar Juice & Restaurant was a limited liability partnership firm. The Accused No.2 was a partner and the authorized signatory of the firm. Both the Petitioners

herein i.e. Accused Nos.3 and 4 were the partners of the accused No.1 firm. It is specifically averred in the complaint that the Accused Nos.2, 3 and 4 were responsible for day to day affairs of the firm. It was further mentioned that the Accused No.2 had signed the dishonoured cheque and a promissory note. On 06/04/2016, the complainant extended a business loan of Rs.50 lakhs in favour of the Accused No.1 for developing their juice and hotel business. Towards receipt of that sum, the accused No.1 issued a promissory note and Confirmation & Undertaking in favour of the complainant. The accused No.1 regularly made payment of the agreed accrued interest up to 30/09/2019 and thereafter defaulted in making payment. Towards repayment of principal amount of Rs.50 lakhs along with mutually agreed accrued interest and compensation, the accused No.1 issued a cheque of Rs.75 lakhs dated 08/06/2022 drawn on the Federal Bank, Andheri branch, Mumbai, signed by the accused No.2 on behalf of the accused No.1 and others. The cheque was deposited by the complainant with Bharat Co-operative Bank, Fort branch, Mumbai on 09/06/2022 and it was dishonoured because of insufficient funds vide the memo dated 10/06/2022. After following the due procedure, the complaint was filed. Learned Magistrate issued the process, as mentioned earlier. It was challenged in the revision application. The revision application was dismissed by the Sessions Court. After that, the present petition is preferred challenging both these orders.

6. Learned counsel for the Petitioners submitted that the averments made in the complaint fall short of the requirements of Section 138 r/w. 141 of the N.I. Act. Merely stating that the accused were responsible for day to day affairs of the firm was not enough. She submitted that, neither of the petitioners was signatory to the cheque. She relied on the Judgment of the Hon'ble Supreme Court in the case of ***Sunita Palita and others Versus Panchami Stone Quarry***[1]***.*** She also relied on another Judgment of the Hon'ble Supreme Court in the case of ***Monaben Ketanbhai Shah and another Versus State of Gujarat and others***[2]. She submitted that, based on the averments in the complaint, process could not have been issued against the Petitioners.

1 (2022) 10 Supreme Court Cases 152
2 (2004) 7 Supreme Court Cases 15

7. Learned counsel for the Respondent No.2/complainant, on the other hand, submitted that the averments in the complaint are enough to launch the prosecution against the petitioners. He submitted that the record on the portal of the Corporate Affairs shows that the Petitioners are still active partners of the accused No.1 M/s. Amar Juice & Restaurant LLP. He also relied on one annexure to the complaint which is at page No.92 of the present petition. The said document mentions that, both the present petitioners were described as "Directors/Signatory" of the accused No.1. He, therefore, submitted that, the said document itself shows that they were in-charge of and were responsible for day to day affairs of the said firm i.e. accused No.1.

8. I have considered these submissions. As noted above, the only averment against the present petitioners is that the present petitioners being accused Nos.3 and 4 were the partners of the accused No.1 firm. The accused No.2 and the present petitioners were responsible for day to day affairs of the firm. Besides this particular averment, there is no specific reference to these petitioners in the rest of the complaint. In this connection the

observations of the Hon'ble Supreme Court in the case of ***Sunita Palita (supra)*** are important. In the said Judgment, the Hon'ble Supreme Court has reproduced the observations made in another Judgment in the case of ***National Small Industries Corpn. Ltd. V. Harmeet Singh Paintal***[3], wherein it was mentioned that the complaint should spell out as to how and in what manner the accused was in charge of and was responsible to the company for the conduct of its business. It was further observed that, such view was in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not sufficient or adequate fulfillment of the requirements U/s.141 of the N.I.Act.

9. In paragraph-45 of the ***Sunita Palita's case (supra)*** it was further observed that, the impleadment of all Directors of an

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3 (2010) 3 SCC 330

accused company on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company, without anything more, does not fulfil the requirements of Section 141 of the N.I. Act.

10. For a ready reference, Section 141 of the N.I. Act is reproduced as follows:

> **141. Offences by companies**
>
> (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
>
> > Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:
> >
> > [Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for

prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purposes of this section,--

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

11. Explanation to this section covers a ‘firm’ and the ‘director’ also included a partner in the firm. In this context, the Judgment of the Hon’ble Supreme Court in the case of ***Monaben Shah (supra)***, is important. This judgment was in respect of vicarious liability of the partners. It was observed that, there was no presumption that every partner knows about the transaction. Reading both these Judgments i.e. ***Sunita Palita’s case (supra) and Monaben Shah’s case (supra),*** it is clear that the observations in

Sunita Palita's case (supra) are applicable to the facts of the present case, because the averments do not make out a case U/s.141 of the N.I. Act. In the present case, it is mentioned that the Accused No.1 was a limited liability firm. The observations of the Hon'ble Supreme Court in both these judgments would be applicable to the limited liability partnership firm established under the Limited Liability Partnership Act, 2008. The vicarious liability of a partner would be governed by Section 141 of the N.I.Act.

12. I am not inclined to accept the submission on behalf of the complainant that the document annexed to the complaint shows that the petitioners were signatories of the said firm and, therefore, they were in charge of the conduct of business of the firm. There is absolutely no such averment in the complaint. Learned Magistrate has to consider the averments in the complaint. In the present case, the averments fall short of the necessary requirement of Section 141 of the N.I. Act. Learned Additional Sessions Judge has not given proper reasons as to how the petitioners' case was covered U/s.141 of the N.I. Act forcing

them to face the prosecution. In this view of the matter, the petition succeeds.

13. Hence, the following order:

O R D E R

i) Rule is made absolute in terms of prayer clauses (b) and (c); qua the Petitioners only.

They read thus:

"(b) that this Hon'ble court be pleased to issue appropriate writ, order and directions directing quashing and setting aside of the said order dated 10/05/2023 passed by the Ld. 17th Session Court Judge thereby rejecting the Revision Application No.1051 of 2022 filed by the present Petitioners on such terms as this Hon'ble Court may deem fit and proper in the matter;

(c) that this Hon'ble court be pleased to issue appropriate writ, order and directions directing quashing and setting aside of the impugned order dt.23/09/2022 passed by the Ld. 33rd MM Court, Ballard Pier, Mumbai u/s 204 thereby issuing process against the Applicants in Criminal Case No. Summary Case/3785/2022."

ii) The Petition is disposed of in the aforesaid terms.

(SARANG V. KOTWAL, J.)