

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.3230 OF 2022

Vaikunth Gangaram Gurud

...Petitioner

Versus

Virani Construction Company through its
partner Iqbal Esmail Virani & Ors

...Respondents

Mr. Rohan Sawant a/w Vinod Nagula, i/b Antham Legal,
Advocate, for Petitioner.

Mr. Aditya Mehta a/w Anuja Abhyankar & Ahmed Padela, i/b
Lexicon Law Partners, Advocate, for Respondent No.1.

Mr. A.R. Patil, APP, for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 21st AUGUST 2023

PC :

1. The Petitioner has approached this Court for quashing the proceedings in S.C.C. No.1021 of 2018 pending before the Chief Judicial Magistrate Thane. The Petitioner has not challenged the order of issuance of process. The Petitioner had not approached the Court of Sessions challenging the order of issuance of process. He has directly approached this Court with this prayer without challenging the order of issuance of process.

2. Learned Counsel for the Respondent No.1, who is the original Complainant, pointed out that the complaint was filed in

the year 2018. The Petitioner appeared before the learned Magistrate on 29th January 2019 and after that, this Petition is filed much belatedly on 3rd August 2022. In the meantime, the matter has proceeded to the stage of cross-examination. The next stage is for cross-examination of the Complainant, whose evidence is tendered in the form of affidavit in the nature of examination-in-chief. Considering the vague prayer and the belated stage at which the Petitioner has approached this Court, on this ground alone, the Petition deserves to be dismissed. However, in the interest of justice, I have heard the parties on merits of the matter. It is the contention of the learned Counsel for the Petitioner that the averments made in the complaint are not sufficient to attract the provisions of Section 138 r/w 141 of the Negotiable Instruments Act, 1881 (for short “N.I. Act”). The role of the Petitioner is not specifically spelt out. There is bald averment regarding the Petitioner. The Petitioner is the original Accused No.3 in the complaint.

3. Learned Counsel relied on the Judgment of the Hon’ble Supreme Court in the case of **Ashok Shewakramani and Others vs.**

State of Andhra Pradesh and Another as reported in **2023 SCC OnLine SC 958**. He also relied on the Judgment of the Hon'ble Supreme Court in the case of **National Small Industries Corporation Limited vs Harmeet Singh Paintal and Another** as reported in **(2010) 3 Supreme Court Cases 330**. He submitted that the Petitioner is not concerned with the main Accused company i.e., the Accused No.1 M/s. Nanda Transformers India Pvt. Ltd. Since 2013, only the Accused Nos.2 and 4 are in-charge of the said company. The Petitioner is not even a signatory to the cheque. Since 2017, the Petitioner was disqualified and therefore, he could not take any steps to disassociate himself from the company. He submitted that it is not specifically mentioned as to how he was in-charge of the Accused No.1 company. The statutory notice was sent on the address of the company and it was not specifically sent on his individual address. Therefore, he could not reply to the said notice. The notice was received by the Accused No.2. He relied on the copies of memorandum of agreement and public notice to contend that the Petitioner had disassociated himself from the Accused company.

4. Learned Counsel for the original Complainant-Respondent No.1 opposed this submission. He submitted that, besides reference to the averments regarding Section 141 of the N.I. Act, there is specific averment in the complaint, as to how and why the present Petitioner was shown as the Accused. He submitted that the documents in the nature of memorandum and public notice issued by the Petitioner are not of such sterling quality; that this Court in exercise of powers under Section 482 of Criminal Procedure Code, 1973 or under Article 227 of the Constitution of India can hold that, those documents at this stage would establish that the Petitioner is not concerned with the Accused company.

5. I have considered these submissions. The complaint mentions that the complainant's company had purchased transformers from the Accused company. The transformers were defective and, therefore, they were returned. The Complainant had already parted with the amount, therefore, in repayment thereof, the Accused issued a cheque dated 23rd October 2017 drawn on IDBI Bank Ltd. Airoli branch, Navi Mumbai for

Rs.8,85,000/-. It was dishonoured and after following due procedure, the complaint was filed.

6. The important issue about the averments of regarding the Petitioner's role can be seen from various paragraphs of the complaint. Paragraph 3 of the complaint reads thus:-

“3. The Complainant states that the Accused no 1 is a Private limited company duly incorporated under Indian Companies act, 1956, having their office at Plot no W-425, MIDC, Rabale, Navi Mumbai 400701 & the Accused nos 2, 3 & 4 are the directors of the Accused no 1, the Accused nos 2, 3 & 4 are the persons concerned for the decision making & day to day business management of the Accused no 1. The Accused nos 2, 3 & 4 are also the controller and conductor of the Accused no.1. The Complainant has always dealt with the Accused nos 2, 3 & 4 with regard to the transaction.”

Paragraph 4 of the complaint reads thus:-

“4. The Complainant states that the Accused no.1 are manufacturing and selling the Transformer & the Complainant during the course of business have dealt with the Accused nos 2, 3 & 4 on behalf of the Accused no.1 for purchasing the

Transformers.”

Paragraph 8 of the complaint reads thus:-

“8. It was further agreed that the Accused shall issue a cheque worth Rs 8.85 lacs towards refund of the amount duly received by the Accused no.1 through the Accused nos. 2, 3 & 4 from the Complainant & after the said cheque gets honoured into the bank account of the Complainant, the Accused shall receive the delivery of the said defective Transformer. The Complainant states that accordingly the Accused nos. 2, 3 & 4 on behalf of the Accused no.1 Issued cheque no. 306942 dated 23/10/2017 drawn on IDBI Bank Ltd, Airoli Branch, Navi Mumbai, worth Rs. 8,85,000/- from the account maintained by the Accused no.1 duly signed by the Accused no. 2 for and on behalf of the Accused nos 1, 3 & 4 in favour of the Complainant.”

7. The Judgments relied on by the learned Counsel for the Petitioner make reference to the bald averments regarding the Accused in those cases. In Ashok Shewakramani's case, it was held that, the words "was in charge of" and "was responsible to the company for conduct of the business of the company" can not be read disjunctively and on the basis of the averments made in those

cases, the Hon'ble Supreme Court found that the averments were not sufficient. In the case of National Small Industries Corporation Ltd, it was held that there should be necessary averments to show how and in what manner the Accused was guilty of consent, connivance, negligence and, therefore, responsible under sub-section (2) of Section 141 of the N.I. Act.

8. In the present case, apart from the requisite averments that the Accused including the Petitioner were concerned for decision making and day to day business management of the Accused company, they were also the controller and conductor of the Accused No.1 company. Besides this, there is an important averment that the Complainant always dealt with the Accused Nos.2, 3 and 4 with regard to the transaction. This includes the present Petitioner. The Complainant has further averred that during the course of the business, the Complainant had dealt with the Accused Nos.2, 3 and 4, which included the Petitioner on behalf of the Accused No.1 company for purchasing the transformers. Thus, there are clear averments against the Petitioner attracting Section 141 of N.I. Act in the complaint than

just reproducing the wording of Section 141 of the N.I. Act. The Complainant had specifically dealt with the Petitioner in the transaction of purchase of transformers. Paragraph 8 also mentions that it was agreed by all Accused including the present Petitioner regarding refund of the said amount. Thus, the role of the Petitioner is specified in the complaint. It satisfies the requirement of Section 141 of N.I. Act.

9. Therefore, for all these reasons, the proceedings against the Petitioner can not be quashed and the Petition is dismissed.

(SARANG V. KOTWAL, J.)