IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3177 OF 2022

Sarika Dattatray Giri ..Petitioner
Versus
M/s. HDFC Bank Limited & Anr. ..Respondents

Mr. Jagannath S. Pawar for Petitioner.
Mr. Ashok Kotangle i/b. KB & Co. for Respondent No.1.
Smt. M. R. Tidke, APP for State/Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 4 JULY 2023

PC :

1. Heard Shri. Jagannath Pawar, learned counsel for the Petitioner, Shri. Ashok Kotangle, learned counsel for the Respondent No.1 and Ms. Tidke, learned APP for the State.

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

3. The Petitioner has challenged the order dated 20.10.2021 passed by the Metropolitan Magistrate, 56th Court, Mazgaon, Mumbai, whereby process was issued against the Petitioner and her co-accused U/s.138 of the Negotiable

Instruments Act. The complaint is filed by the Respondent No.1 herein against the accused No.1 Dattatray Giri who is the husband of the Petitioner and the petitioner herself as the accused No.2. The complaint mentions that the accused had obtained loan from the complainant company for light commercial vehicle. There was default in making payment of installments and, therefore, the vehicle was taken back by the complainant on 19/09/2015. It was sold on 10/02/2016 for Rs.7,40,000/-, but still there was shortfall of more than Rs.4,25,000/-. Therefore, the accused issued a cheque as part payment of the dues. The cheque was for Rs.96000/- drawn on Union Bank of India, dated 25/07/2018. The cheque was dishonoured and after following due procedure the complaint was filed.

4. Learned counsel for the Petitioner invited my attention to the reply to one of the applications filed by the complainant on 03/03/2022, in which, it was clearly mentioned that the Petitioner's husband i.e. accused No.1 was the borrower and the Petitioner was the guarantor. He also invited my attention to a copy of the cheque in question which is annexed at Exhibit-A to

this petition which also shows that the cheque was issued by the accused No.1 in his individual capacity. The Petitioner was not the drawer of the cheque. He submitted that the Petitioner, therefore, cannot be prosecuted for commission of offence U/s.138 of the N.I. Act.

5. Learned counsel for the Respondent No.1 opposed these submissions and supported the impugned order.

6. I have considered these submissions. The complaint nowhere describes the Petitioner's role specifically. The cheque was issued by the accused No.1 and not by the Petitioner. The case of the complainant, as mentioned in the reply dated 03/03/2022 shows that the Petitioner was the guarantor. As far as prosecution U/s.138 of N.I. Act is concerned, admittedly, she was not the drawer of the cheque. Therefore, the petitioner cannot be prosecuted for commission of the offence U/s.138 of the N.I.Act. The impugned order is liable to be set aside.

7. Hence, the following order:

ORDER

i) The order dated 20/10/2021 passed by the Metropolitan Magistrate, 56th Court, Mazgaon, Mumbai, below Exhibit-1 in C.C.No.5837/SS/2019 issuing process against the Petitioner is set aside; qua the petitioner only.

ii) Rule is made absolute in the aforesaid terms.

iii) The petition is disposed of.

(SARANG V. KOTWAL, J.)