IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition No.3099 of 2016

Mr Deepak Sharma
Age 35 Occupation Business
Having address at A-2,Sector 10,
Noida, Utter Pradesh ... Petitioner
(Original Accused No.3)

Versus

1. The State of Maharashtra

2. M/s Apar Industries Ltd
Having its registered at
201-202, 2nd floor, Bezzola
Complex Sion Trombay Road
Chembur, Mumbai -400 071 ... Respondents
(Resp.No.2 Original Complainant)

Mr Laxman P. Kanal, Advocate for the Petitioner.
Mr AD Kamkhedkar, APP for respondent No.1/State.
Mr Santosh Kyadiguppi, Advocate i/b Maneesh Dixit for respondent No.2.

Coram : R. N. Laddha, J.

Date : 13 December 2023.

P.C. :

Heard Mr Laxman P. Kanal, the learned Counsel for the petitioner; Mr Santosh Kyadiguppi, the learned Counsel for respondent No.2; and Mr AD Kamkhedkar, the learned Additional Public Prosecutor for respondent No.1-State.

2. By this petition, the accused/petitioner seeks to challenge the order dated 16.6.2014 (impugned order) passed by the learned Metropolitan Magistrate, 59th Court, Kurla, Mumbai, in CC No.1584/SS/2014, whereby the learned Magistrate issued a process against the accused/petitioner and others for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act').

3. Mr Laxman P. Kanal, the learned Counsel for the petitioner, submitted that the petitioner/accused was neither a director of the accused company when the cheque in question was issued nor was he the signatory to the cheque. He drew the attention of this Court to Form 32, which shows that the petitioner had already resigned on 5.9.2012.

4. On the other hand, Mr Santosh Kyadiguppi, the learned Counsel for respondent No.2, submitted that the petitioner/accused had resigned from the position of Managing Director on 5.9.2012; however, he continued to serve as a director and was holding the position of director in the accused company on the day the cheque was issued.

5. The record demonstrates that the complaint was filed

against the company and its directors under Sections 138, read with 141 of the NI Act. It is stated in the complaint that the accused/petitioner is a director and responsible for the day-to-day affairs of the accused company. The averments in the complaint are *prima facie* sufficient to attract the provisions under Sections 138 r/w 141 of the NI Act to issue a process against the accused. The record shows that the disputed cheques were issued in December 2013. The petitioner resigned from the post of the Managing Director of the accused company on 5.9.2012, and he was not the signatory of the disputed cheques. However, he continued as a director of the accused company after his resignation as a Managing Director. Therefore, it cannot be said that at the time of issuance of the process, he was not the director of the accused company.

6. Under Section 141 of the NI Act, a person will become vicariously liable when a company is accused of the offence u/s 138 of the NI Act. The averments in the complaint filed by the complainant/respondent are *prima facie* sufficient to satisfy the mandatory requirements of Section 141(1) of the NI Act to create a vicarious liability upon the petitioner. Section 141(1) of the NI Act states that if a company

commits an offence u/s 138 of the NI Act, then every person who was in charge of and responsible for the conduct of the business of the company at the time of the offence shall be deemed guilty of the offence and shall be liable to be proceeded against accordingly, and if statutory compliance of Section 141 of the NI Act has been made, this Court cannot quash the proceedings against the person accused u/s 482 CrPC. The petitioner/accused did not provide some incontrovertible material or acceptable circumstances to substantiate his contention. Moreover, there are certain presumptions in favour of the complainant u/s 139 of the NI Act, and it is for the accused to rebut the presumption.

7. The complaint was filed for the offence punishable under Sections 138 r/w 141 of the NI Act; the process was issued only u/s 138. In the circumstances, the learned Magistrate should have issued process u/s 138 r/w 141 of the NI Act since the company was arraigned as an accused in the complaint. Additionally, nothing is on record to show that the process could not be issued u/s 141 of the NI Act.

8. Needless to state, issuing a process as a matter of routine without carefully examining the available material on record and understanding the statutory provisions may lead

to an innocent individual suffering. In this case, since the process was issued only u/s 138 and not 141 of the NI Act, the complainant should not be held responsible or face any consequences due to the Magistrate's failure to issue the process under Sections 138 r/w 141 of the NI Act.

9. In view of this, the impugned order of issuance of process is quashed and set aside. As a result, while there is justification for overturning the impugned order, the Magistrate is directed to pass an appropriate order of issuance of process under the relevant Sections of the NI Act as discussed above and to continue with the complaint.

10. Resultantly, the petition stands disposed of in the above terms. It goes without saying that if necessary, the parties are free to seek legal redress for their grievances if the occasion so arises.

[R. N. Laddha, J.]