Ghuge

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4137 OF 2021

The Maharaja Log Home OPC Pvt Ltd and Anr … Petitioners

V/s.

The State of Maharashtra and Ors … Respondents

Mr. Ashok Kumar Dubey with Mr. Anil Pandey, Arti Kushwaha, Swati Kamble i/b SAVJ Law Solutions for the petitioners.

Mr. Ashishkumar Verma for respondent No.2.

Mr. Rakesh Singh with Ms. Heena Shaikh i/b M.V. Kini and Co. for respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : APRIL 6, 2023

P.C.:

1. The petition is directed against the order dated 7th September, 2021 passed by Judicial Magistrate First Class, Vashi, Belapur Navi Mumbai in Complaint Case No.1366/SS/2021 under Section 138 of the Negotiable Instruments Act, 1881 issuing process against the petitioner. The validity of the order has been challenged on the ground that the Income Tax Department withheld the payment of Rs. 99,24,143/- from the account of petitioner on 3rd April, 2020. Therefore, the petitioner was prevented from honoring the cheque for the act beyond his control.

2. The date of cheque is 10th February, 2021. The date of communication by the bank is 3rd April, 2020. From 3rd April, 2020 till 10th February, 2021 the petitioner had enough time to arrange payment of cheque issued in favour of complainant. Even otherwise this Court in Criminal Writ Petition No.1049/2022 by referring to earlier Division Bench Judgment of this Court as held in paragraph No.6 :-

> **6.** In the facts of the case, according to the complainant, the account of the accused was attached due to non-payment of liability of tax of petitioners. If that be so, the petitioners cannot get advantage of their own wrong. It is the petitioners on their failure to pay income-tax dues have invited such order of attachment and now they cannot turn around and say that the circumstances of dishonour of cheque were beyond their control. Even otherwise, this Court in the case of **Rakesh Nemkumar Porwal** (supra) has observed that the reasons for dishonour even if they be very valid as sought to be pointed out in this case, should not and cannot be taken into account by the Magistrate when such a complaint is presented.

3. Learned advocate for the petitioner relied on the Judgment of Delhi High Court in the case of **Vijay Chaudhary Vs. Gyan Chand Jain,** reported in 2008 (2) Bankmann 274, it appears from the discussion of the facts in paragraph 23 that the order of attachment was passed after issuance of alleged cheque but prior to its presentation for encashment, which had effect of disabling the petitioner from operating or maintaining the said account. In the facts of the present case as observed earlier, the order of attachment is of 3rd April, 2020 and the date of cheque is 10th February, 2021 providing opportunity to the accused to deposit the amount. Hence the Judgment is not applicable in the facts of the case.

4. In so far as, Judgment in the case of **Standard Chartered Bank Vs. State,** reported in 2008 (152) DLT 65, order of attachment is dated 03rd March, 2003 the cheque was dishonored on 12th March, 2003 and therefore the single bench of Delhi High Court held that under Section 138 of the Negotiable Instruments Act is not attracted. As observed earlier in the facts of the present case the petitioner had period of one year to deposit of amount of cheque after order of attachment. Therefore, the Judgment is not applicable in the facts of the case. For the reasons stated above there is no merit in the writ petition.

5. The Writ Petition is, therefore, stands dismissed. No costs.

(AMIT BORKAR, J.)