

Ghuge

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

WRIT PETITION NO.5365 OF 2018

Anish Kasturbhai Shah

... Petitioner

V/s.

The State of Maharashtra and Anr

... Respondents

Mr. Subhod Desai with Mr. Nikhil Mengde, Mr. Siddhikesh Ghosalkar for the petitioner.

Ms. M.R. Tidke, APP for the State.

Mr. P. Fernandes i/b Dave and Girish & Co. for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : APRIL 13, 2023

P.C.:

1. The writ petition is directed against the order dated 11th September, 2018, passed by Additional Sessions Judge, 10th Court, Court of Sessions, Mumbai and order dated 11th September, 2017 passed by Metropolitan Magistrate 28th Court, Esplanade Mumbai issuing process against the petitioner.

2. The petition arises out of proceedings under Section 138 of the Negotiable Instruments Act, 1881. The cheques pertain to year 2016-2017. The petitioner is accused No.4.

3. The petitioner has placed on record unimpeachable document in the form DIR-12 issued in pursuant to Sections 7(1) (c), 166 & 170 of the Companies Act, 2013. The petitioner is shown as Independent Non Executive Director. There is no serious

dispute that the petitioner is Independent Non Executive Director. If this be so, the point involved is squarely covered in the the case of **Sunita Palita and Ors Vs. Panchami Stone Quarry**, reported in 2022 SCC OnLine 945, wherein paragraph No.42 held as under :-

42. Liability depends on the role one plays in the affairs of a company and not on designation or status alone as held by this Court in *S.M.S. Pharmaceuticals*, (S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975). The materials on record clearly shows that these appellants were independent, non-executive Directors of the company. As held by this Court in *Pooja Ravinder Devidasani v. State of Maharashtra*, (2014) 16 SCC 1 : (2015 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378) a non-executive Director is not involved in the day-to-day affairs of the company or in the running of its business. Such Director is in no way responsible for the day-to-day running of the accused Company. Moreover, when a complaint is filed against a Director of the company, who is not the signatory of the dishonored cheque, specific averments have to be made in the pleadings to substantiate the contention in the complaint, that such Director was in charge of and responsible for conduct of business of the Company or the Company, unless such Director is the designated Managing Director or Joint Managing Director who would obviously be responsible for the company and/or its business and affairs.

4. Therefore, the prosecution against petitioner for offence under Section 138 read with 141 of the Negotiable Instruments Act, 1881 cannot be proceeded. I, therefore, passed following order.

5. Rule is made absolute in terms of prayer clause (a1) *qua* petitioner only.

(AMIT BORKAR, J.)