2023:BHC-NAG:17568

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.1557/2022
Samrat Ashokkumar Oswal .Vs. M/s. Mahalaxmi TMT Pvt. Ltd. thr. Its authorised officer and another

AND
CRIMINAL APPLICATION (APL) NO.1558/2022
Samrat Ashokkumar Oswal .Vs. M/s. Mahalaxmi TMT Pvt. Ltd. thr. Its authorised officer and another

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. Avinash Gupta, Senior Advocate assisted by Mr. P. P. Kotwal, Advocate for applicant.
Mr. A. G. Joshi with Mr. N. G. Moharir, Advocates for non applicant no.1
Mrs. K. H. Bhondge A.P.P. for non applicant no.2 – State.

CORAM : ANIL L. PANSARE, J.
DATED : 20.12.2023

The applicant – original accused no.3 is aggrieved by the judgments and orders both dated 28.03.2022 passed by Sessions Court, Wardha in Criminal Revision Nos. 4/2017 and 17/2017, whereby the revisions challenging the orders of issuance summons/process dated 30.09.2019 passed by Judicial Magistrate First Class, Wardha in S.C.C. Nos.2391/2016 and 4248/2016, have been dismissed. Thus, in a way, the legality, propriety and correctness of the order of issuance of summons/process is under challenge. The first complaint refers to first two cheques and the second refers to another cheque.

2. The facts necessary to understand the controversy are as under:

The respondent no.1 – M/s. Mahalaxmi TMT Pvt. Ltd. is original complainant and will be hereinafter referred to as the complainant. It has filed complaint under Sections 138 and 141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the, "Act of 1881") against M/s. Karmik Tradelinks Pvt. Ltd. (hereinafter referred to as the "accused no.1"), Mr. Anand Ashokkumar Runwal the director of the accused no.1 – company (hereinafter referred to as the, "accused no.2") and the present applicant, director of accused no.1 – company (hereinafter referred to as the "accused no.3"). Thus, the accused no.3 is before this Court and is aggrieved by the orders of issuance of summons/process under Section 138 of the Act of 1881.

3. According to the complainant, in October, 2011, the accused no.1 approached it for supply of TMT bars through its director, accused no.2. The TMT bars were supplied on short term credit basis. The accused no.1 was making payment through RTGS or cheque. The business continued. However, from January, 2015, there occurred inordinate delay in making payments by accused no.1 on the ground of financial difficulties. After continuous persuasion, the accused no. 1 issued four cheques in favour of the complainant – company on 02.02.2016. The cheques were signed by the accused no.2. The cheques were deposited for encashment on 05.04.2016, 06.04.2016 and 26.07.2016. The cheques were dishonoured for insufficient funds. Accordingly, after

completing the formalities, the complainant lodged complaints against accused persons for the offence punishable under Section 138 of the Act of 1881.

4. Mr. Avinash Gupta, learned Senior Counsel for the applicant – accused no.3 contends that during the relevant time, accused no.3 was not director of the company. The factual aspect is that he became director of the accused no.1 on 10.02.2016 and resigned on 31.03.2016. The intimation has been given to the Registrar of Companies on 07.04.2016. The learned Senior Counsel has then drawn my attention to the averments made in the complaint. He contends that the transaction under question is of the month of October, 2011. The signatory to the cheque is accused no.2. The cheques were presented for encashment on 06.04.2016. He submits that the applicant was not Director either in October, 2011 or on 02.02.2016 when the cheques were issued or on 06.04.2016 when the cheques were presented for encashment. The order of supply of TMT bars was allegedly given through accused no.2.

5. The learned senior Counsel submits that in this situation, mere incorporating the expression used in the provisions under Section 141 of the Act of 1881 that the accused nos. 2 and 3 are directors of the accused no.1 and incharge and responsible for the conduct of the business of the company during the material time is not sufficient and will not attract ingredients of Section 138 read with Section 141 of the Act of 1881.

6. In support, Mr. Gupta, has relied upon the judgment in the case of **Siby Thomas Vs. M/s. Somany Ceremics Ltd.** reported in **(2023) SCC Online 1299,** wherein the Supreme Court while dealing with Section 141 of the Act of 1881, referred to couple of its earlier judgments and observed in paragraphs 16 to 19 thus:

> "***16.*** *In view of the factual position relating the averments revealed from the complaint as aforesaid it is relevant to refer to the decisions relied on by the learned counsel appearing for the appellant. In the decision in Anita Malhotra's case (supra) in paragraph 22 it was held thus:—*
>
> "*22. This Court has repeatedly held that in case of a Director, the complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the accused company for conduct of its business and mere bald statement that he or she was in charge of and was responsible to the company for conduct of its business is not sufficient. (Vide* National Small Industries Corpn. Ltd. *v.* Harmeet Singh Paintal). *In the case on hand, particularly, in Para 4 of the complaint, except the mere bald and cursory statement with regard to the appellant, the complainant has not specified her role in the day-to-day affairs of the Company. We have verified the averments as regards to the same and we agree with the contention of Mr. Akhil Sibal that except reproduction of the statutory requirements the complainant has not specified or elaborated the role of the appellant in the day-to-day affairs of the Company. On this ground also, the appellant is entitled to succeed."*

17. *Paragraph 19 of the Ashok Shewakramani's case (supra) is also relevant for the purpose of the case and it, in so far as relevant, reads thus:*

"*19. Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it comes to a penal provision. The vicarious liability is attracted when the ingredients of subsection 1 of Section 141 are satisfied. The Section provides that every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of business of the company, as well as the company shall be deemed to be guilty of the offence under Section 138 of the NI Act. In the light of sub-section 1 of Section 141, we have perused the averments made in the complaints subject matter of these three appeals. The allegation in paragraph 1 of the complaints is that the appellants are managing the company and are busy with day to day affairs of the company. It is further averred that they are also in charge of the company and are jointly and severally liable for the acts of the accused No. 1 company. The requirement of sub-section 1 of Section 141 of the NI Act is something different and higher. Every person who is sought to be roped in by virtue of sub-section 1 of Section 141 NI Act must be a person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company. Merely because somebody is managing the affairs of the company, per se, he does not become in charge of the conduct of the business of the company or the person responsible for the company for the conduct of the business of the company. For example, in a given case, a manager of a company may be managing the business of the company. Only on the ground that he is managing the business of the company, he cannot be roped in* *based on sub-section 1 of Section 141 of the NI Act. The second allegation in the complaint is that the appellants are busy with the day-to-day affairs of the company. This is hardly relevant in the context of subsection 1 of Section 141 of the NI Act. The allegation that they are in charge of the company is neither here nor there and by no stretch of the imagination, on the basis of such averment, one cannot conclude that the allegation of the second respondent is that the appellants were also responsible to the company for the conduct of the business. Only by saying that a person was in charge of the company at the time when the offence was committed is not sufficient to attract sub-section 1 of Section 141 of the NI Act."*

18. *Thus, in the light of the dictum laid down in Ashok Shewakramani's case (supra), it is evident that a vicarious liability would be attracted only when the ingredients of Section 141(1) of the NI Act, are satisfied. It would also reveal that merely because somebody is managing the affairs of the company, per se, he would not become in charge of the conduct of the business of the company or the person responsible to the company for the conduct of the business of the company. A bare perusal of Section 141(1) of the NI Act, would reveal that only that person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished. In such* *circumstances, paragraph 20 in Ashok Shewakramani's case (supra) is also relevant. After referring to the Section 141(1) of NI Act, in paragraph 20 it was further held thus:*

"20. On a plain reading, it is apparent that the words "was in charge of" and "was responsible to the company for the conduct of the business of the company" cannot be read disjunctively and the same ought be read conjunctively in view of use of the word "and" in between."

***19.** The upshot of the aforesaid discussion is that the averments in the complaint filed by the respondent are not sufficient to satisfy the mandatory requirements under Section 141(1) of the NI Act. Since the averments in the complaint are insufficient to attract the provisions under Section 141(1) of the NI Act, to create vicarious liability upon the appellant, he is entitled to succeed in this appeal. We are satisfied that the appellant has made out a case for quashing the criminal complaint in relation to him, in exercise of the jurisdiction under Section 482 of Cr. P.C. In the result the impugned order is set aside and the subject Criminal Complaint filed by the respondent and pending before Ld. CJ (JD) JMIC, Bahadurgarh, in the matter titled as Somany Ceramics v. Tile Store etc. vide COMA-321-2015 (CNRNO : HRJRA1004637-2015), stand quashed only in so far as the appellant, who is accused No. 4, is concerned. Appeal stands allowed as above. There will be no order as to costs."*

7. Thus, the Supreme Court has, in unequivocal terms, held that in a case under Sections 138 and 141 of the Act of 1881, the complainant should specifically spell out how and in what manner, the director or incharge of the company was responsible for the acts of the company for conduct of its business and mere bald statement that the or she was incharge of and was responsible to the company for conduct of its business is not sufficient. The Court has further held that merely because somebody is managing affairs of the company per se he would not become incharge of the conduct of the business of the company or the person responsible to the company for the conduct of the business of the company. Mr. Gupta, learned Senior Counsel has further relied upon the following cases where the aforesaid view was consistently taken by the Supreme Court and the High Courts.

(i) *Siby Thomas Vs. M/s. Somany Ceremics Ltd.; (2023) SCC Online 1299*
(ii) Ashok Shewakramani and Ors. Vs. State of Andhra Pradesh and anr.; (2023) 8 SCC 473
(iii) Dharna Goyal alias Dharna Garg Vs. Aryan Infratech Pvt. Ltd.; AIR Online 2020 Del 1539
(iv) Gunmala Sales Pvt Ltd. Vs. Anu Mehta and ors.; 2015 (5) Mh. L. J. 1
(v) Anita Malhotra Vs. Apparel Export Promotion Council and another; (2012) 1 SCC 520
(vi) Harshendra Kumar D. Vs. Rebatilata Koley; (2011) 3 SCC 351
(vii) National Small Industries Corporation Ltd. Vs. Harmeet Singh Paintal and anr.; 2010 AIR SCW 1508
(viii) K.K. Ahuja v. V.K. Vora; (2009) 10 SCC 48
(ix) Saroj Kumar Poddar v. State; (2007) 3 SCC 693.

8. As against, the learned counsel for the non applicant – complainant, submits that it is the well settled that while examining the legality and correctness of the order of issuance of process, the Court has to scrutinize the averments made in the complaint. The defence available to the accused is not relevant. According to him, the notices were issued to all the accused. The applicant/accused no.3 did not reply. In absence of reply, the complainant is not expected to have knowledge of the date of entry of the persons like the accused no.3 in the company as director and his resignation as well. The fact remains that he was director at the relevant time. One of the dates quoted on cheque is/was 13.02.2016 at which time, accused no.3 was director of accused no.1 and, therefore, can be prosecuted under the provisions of the Act of 1881. He further submits that averments made in the complaint are in conformity with the provisions made under Section 141 of the Act of 1881, therefore, the prosecution is maintainable against the accused no.3. The issuance of process cannot be faulted with. The accused no.3 is at liberty to appear before the trial Court and put forth his defence. Accordingly, he has supported the order passed by the trial Court as also the revisional Court.

9. In support, Mr. Joshi has relied upon judgment in the case of **S.P. Mani and Mohan Dairy Vs. Dr. Snelatha Elangovan** reported in **(2022) SCC Online SC 1238**. The scope of Section 141 has been dealt with in this case as well. The Supreme Court has observed thus:

*"**24.** Evidently, the gist of Section 138 is that the drawer of the cheque shall be deemed to have committed an offence when the cheque drawn by him is returned unpaid on the prescribed grounds. The conditions precedent and the conditions subsequent to constitute the offence are drawing of a cheque on the account maintained by the drawer with a banker, presentation of the cheque within the prescribed period, making of a demand by the payee by giving a notice in writing within the prescribed period and failure of the drawer to pay within the prescribed period. Upon fulfilment of these requirements, the commission of the offence which may be called the offence of 'dishonour of cheque' is complete. If the drawer is a company, the offence is primarily committed by the company. By virtue of the provisions of sub-section (1) of Section 141, the guilt for the offence and the liability to be prosecuted and punished shall be extended to every person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of its business; irrespective of whether such person is a director, manager, secretary or other officer of the company. It would be for such responsible person, in order to be exonerated in terms of the first proviso, to prove that the offence was committed without his knowledge or despite his due diligence.*

***25.** Under the separate provision of sub-section (2), if it is proved that the offence was committed with the* *consent or connivance of or was attributable to the neglect on the part of any director, manager, secretary or other officer of the company, such person would also be deemed to be guilty for that offence. Obviously, the burden of alleging and proving consent, connivance or neglect on the part of any director, etc. would rest upon the complainant. The non obstante clause with which the sub-section (2) opens indicate that the deeming provision is distinct and different from the deeming provision in sub-section (1) in which the office or designation of the person in charge of and responsible to the company for the conduct of its business is immaterial.*

26. *While the essential element for implicating a person under sub-section (1) is his or her being in charge of and responsible to the company in the conduct of its business at the time of commission of the offence, the emphasis in sub-section (2) is upon the holding of an office and consent, connivance or negligence of such officer irrespective of his or her being or not being actually in charge of and responsible to the company in the conduct of its business. Thus, the important and distinguishing feature in sub-section (1) is the control of a responsible person over the affairs of the company rather than his holding of an office or his designation, while the liability under sub-section (2) arises out of holding an office and consent, connivance or neglect. While all the persons covered by sub-section (1) and* *subsection (2) are liable to be proceeded against and also punished upon the proof of their being either in charge of and responsible to the company in the conduct of its business or of their holding of the office and having been guilty of consent, connivance or neglect in the matter of commission of the offence by the company, the person covered by sub-section (1) may, by virtue of the first proviso, escape only punishment if he proves that the offence was committed without his knowledge or despite his due diligence.*

27. *As for the requisite evidence, the burden upon the prosecution would be discharged under sub-section (1) when a person is proved to be in charge of and responsible to the company in the conduct of its business and would shift upon the accused to prove that he was ignorant or diligent, if that be his defence; whereas under sub-section (2) the prosecution would be required to allege and prove the consent, connivance or neglect and holding of the office by the accused. There is nothing to suggest that the same person cannot be made to face the prosecution either under sub-section (1) or sub-section (2) or both. A director or manager can be arraigned and proved to be guilty as the person in charge of and responsible to the company as well as the director of the company who, as such, might have consented to, connived at or been negligent in respect of the offence of dishonour of cheque, be logically deduced that a person can be* *arraigned in a complaint as the accused along with the company if it prima facie appears that he was in charge of and responsible to the company for the conduct of its business, although he may or may not be or may not have continued to be a director or other officer of the company, as mentioned in subsection (2). It would be sufficient if the complaint indicates that such person has been arraigned on the basis of averments which disclose him or her to be the person in charge of and responsible to the company in the conduct of its business at the time the offence was committed. Evidently, a person who signs the cheque or who has the authority to sign the cheque for and on behalf of the company, regardless of his office or capacity, can, prima facie, be assumed to be in charge of and responsible to the company in the conduct of its business. And, where such person is prosecuted, then, if it be his defence that the offence was committed without his or her knowledge or that he or she has exercised all due diligence to prevent the commission of such offence, the burden to prove that would be on him or her and can only be discharged at the stage of evidence."*

10. The careful reading of the above judgment would show that by virtue of the provisions of Sub Section (1) of Section 141 of the Act of 1881, the guilt for the offence and the liability to be prosecuted and punished shall be extended to every person who, at the time the offence was committed,

was in charge of and was responsible to the company for the conduct of its business; irrespective of whether such person is a director, manager, secretary or other officer of the company. As regards Sub Section (2), if it is proved that the offence was committed with the consent or connivance of or was attributable to the neglect on the part of any director, manager, secretary or other officer of the company, such person would also be deemed to be guilty for that offence and accordingly the Supreme Court has held that the essential element for implicating the person under Sub Section (1) is his or her being in charge of and responsible to the company in the conduct of its business at the time of commission of the offence, whereas the emphasis in sub-section (2) is upon the holding of an office and consent, connivance or negligence of such officer irrespective of his or her being or not being actually in charge of and responsible to the company in the conduct of its business. As for the requisite evidence, the Supreme Court has stated that the burden upon the prosecution would be discharged under the sub section when a person is proved to be incharge of and responsible to the company in the conduct of its business and would shift upon the accused to prove that he was ignorant or diligent, if that be his defence; whereas under sub-section (2) the prosecution would be required to allege and prove the consent, connivance or neglect and holding of the office by the accused.

11. The Supreme Court has further clarified the expression, “At the time the offence was committed” used in

sub section (1) of Section 141 of the Act of 1881. The Supreme Court has held that an offence means an aggregate of the acts or omissions which are punishable by law and, therefore, can consist of several parts, each part being committed at different times and places involved. The provisions of Section 138 would require a series of the acts of commissions and omissions to happen before the offence of what may be called “dishonour of cheque” can be constituted for the purpose of prosecution and punishment. The requisite components of the offence under Section 138 are;

(1) drawing of the cheque,
(2) presentation of the cheque to the bank,
(3) returning the cheque unpaid by the drawee bank,
(4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount,
(5) failure of the drawer to make payment within 15 days of the receipt of the notice.

12. The Supreme Court has then stated that different persons can be incharge of the company when each of the series of the acts of commission and omission essential to complete the commission of offence by company were being committed. To take an example, the Supreme Court states that in the case of a company, “A” might be in charge of the company at the time of drawing the cheque, “B” might be in charge of the company at the time of dishonour of cheque and “C” might be in charge of the company at the time of failure to pay within 15 days of the receipt of the demand

notice. In such a case, the possibility of prosecution of A, B and C or any of them would advance the purpose of the provision and, if none can be prosecuted or punished, it would frustrate the purpose of the provisions of Section 138 as well as Section 141. Accordingly, the Supreme Court has held that every person who was incharge and was responsible to the company for the conduct of its business at the time of the components necessary for the commission of the offence occurred may be, “proceeded against”, but may not be “punished” if he succeeds in proving that the offence was committed without his knowledge and despite his due diligence; the burden of proving that remaining on him.

13. In the light of the above, the averments made in the complaint will have to be examined to find out whether the orders issuing summons/process are justifiable. The complainant has averred that accused nos.2 and 3 are directors of accused no. 1 – company and are/were incharge and responsible for the conduct of the business of the company during the material time. The cheques under question have been singed by the accused no.2 and were issued to the complainant on 02.06.2016. Four cheques were dated 13.02.2016, 04.04.2016, 06.05.2016 and 28.06.2016. The cheques were deposited during the period from 05.04.2016 to 11.08.2016. The cheques were dishonoured. The complainant issued notice to the three accused by registered post as also by ordinary post. The notice was delivered to the accused on 26.04.2016. The accused failed to submit reply. Accused no.2, however, made contact with

the chairman and other directors and officials of the complainant and promised to pay dues. However, the payment was not received within the stipulated period of 15 days and, therefore, the complaints were filed.

14. The complainant has further averred that it has sent notice to the various directors of accused no.1 company. The complainant came to know that some directors have resigned long back and, therefore, they were not responsible for the business of the company. The accused no.2 is signatory of the cheque and also director of the company. Accused no.3 is brother in law of accused no.2. It is further alleged that even before appointment as director, the accused no.3 is/was also looking after day-to-day affairs of the business of the company along with accused no.2 and, therefore, is liable for the acts of the company. Accordingly, the complaint has been lodged.

15. The question now arises is whether the averment so made can be said to be in conformity with the provisions of Sections 138 and 141 of the Act of 1881. In my considered opinion, the averments so made, in the peculiar facts and circumstances, can be said to be in conformity with the provisions of the Act of 1881. The reasons follow.

16. Learned Senior Counsel has pointed out that the accused no.3 was not director at the relevant time and was director of accused no.1 – company for a very short duration viz. between 10.02.2016 to 31.03.2016. The facts indicate

that the cheques were issued prior to the said period and were presented subsequent thereto. The notice was naturally issued by the complainant – company subsequent to the accused no.3 having resigned from the post of the director. These dates, as regards the entry of accused no.3 as director and his exit on particular date are exclusively within the knowledge of the accused no.3 or persons connected with him. There is nothing on record to show that the complainant was aware of such status. The complainant has averred that he had issued notice to all the accused but they failed to respond. In the circumstances, had the accused no.3 replied the notice and clarified his stand/status, one may expect the complainant to undertake further inquiry and to find out what was the legal status of the company on the date of commission of the offence and what was the status of the accused no.3 in the company. Having failed to submit his reply, accused no.3 in a way, made complainant believe that he was director at the relevant time and was incharge of and responsible for the conduct of the business of the company at the time when the offence was committed. The complainant cannot be made to suffer for the inaction on the part of the persons like accused no.3 who failed to clarify his status in the company at the relevant point of time.

17. On the point of importance of specific averment in the complaint and the statutory notice, the findings in *S.P. Mani and Mohan Dairy's* case supra are significant, which reads thus:

*"**43.** In the case on hand, we find clear and specific averments not only in the complaint but also in the statutory notice issued to the respondent. There are specific averments that the cheque was issued with the consent of the respondent herein and within her knowledge. In our view, this was sufficient to put the respondent herein to trial for the alleged offence. We are saying so because the case of the respondent that at the time of issuance of the cheque or at the time of the commission of the offence, she was in no manner concerned with the firm or she was not in-charge or responsible for day-to-day affairs of the firm cannot be on the basis of mere bald assertion in this regard. The same is not sufficient. To make good her case, the respondent herein is expected to lead unimpeachable and incontrovertible evidence. Nothing of the sort was adduced by the respondent before the High Court to get the proceedings quashed. The High Court had practically no legal basis to say that the averments made in the complaint are not sufficient to fasten the vicarious liability upon the respondent by virtue of Section 141 of the NI Act.*

***44.** We may also examine this appeal from a different angle. It is not in dispute, as noted above, that no reply was given by the respondent to the statutory notice served upon her by the appellant. In the proceedings of the present type, it is essential for the person to whom statutory notice is issued under Section 138 of the NI Act to give an appropriate reply.*

The person concerned is expected to clarify his or her stance. If the person concerned has some unimpeachable and incontrovertible material to establish that he or she has no role to play in the affairs of the company/firm, then such material should be highlighted in the reply to the notice as a foundation. If any such foundation is laid, the picture would be more clear before the eyes of the complainant. The complainant would come to know as to why the person to whom he has issued notice says that he is not responsible for the dishonour of the cheque. Had the respondent herein given appropriate reply highlighting whatever she has sought to highlight before us then probably the complainant would have undertaken further enquiry and would have tried to find out what was the legal status of the firm on the date of the commission of the offence and what was the status of the respondent in the firm. The object of notice before the filing of the complaint is not just to give a chance to the drawer of the cheque to rectify his omission to make his stance clear so far as his liability under Section 138 of the NI Act is concerned.

45. *Once the necessary averments are made in the statutory notice issued by the complainant in regard to the vicarious liability of the partners and upon receipt of such notice, if the partner keeps quiet and does not say anything in reply to the same, then the complainant has all the reasons to believe that what he* *has stated in the notice has been accepted by the noticee. In such circumstances what more is expected of the complainant to say in the complaint."*

18. Thus, the Supreme Court has held that the failure to submit reply to the statutory notice has its own consequences viz. the complainant is made to believe that the contents of notice are accepted by the noticee. In the present case, the complainant has issued statutory notice to the accused nos. 1, 2 and 3, stating therein that accused nos. 2 and 3 are/were directors of the accused no.1 and were incharge of and responsible for the day to day activities of business of the company at the material time. This allegation has been not denied by the accused no.3 by submitting his reply. In addition, the complainant has also alleged that the accused no.3 was looking after day to day business of the accused no.1 even prior to becoming the director of accused no.1 company.

19. In the circumstances, when the applicant has not responded and thus admitted the averments made in the statutory notice that at the relevant time he (the respondent) was director of the company and was incharge of and responsible for the day-to-day affairs of the company, the non applicant/complainant cannot be expected to plead a detailed role played by the applicant as necessitated in the judgments cited by the applicant. In fact, the applicant, having realized the hurdle, has replied the notice but only after filing complaint, making it inconsequential.

20. In the circumstances, the submissions put forth by the learned Senior Counsel in this regard, can only be taken as defence, which may be available to the applicant before the trial Court.

21. The orders issuing summons/process cannot, therefore, be faulted with. The continuation of the proceedings cannot be, thus, said to be abuse of process of law. There is no substance in the applications. No interference is called for under the inherent jurisdiction of this Court. The applications are accordingly rejected.

(Anil L. Pansare, J.)

Kahale