2024:BHC-AUG:5788

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1325 OF 2018

Dr. Narendra Someshwar Bhatt … Petitioner

VERSUS

M/s Sandakan Investment Pvt. Ltd.
Through its Officer
Mr. Vilas Varaikar … Respondent

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Mr. Lahirimanohar D. Vakil, Advocate for Petitioner

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 08th MARCH, 2024

ORDER:

1. By this petition, filed under articles 226 and 227 of Constitution of India read with section 482 of the Code of Criminal Procedure, petitioner seeks quashing of proceedings in S.C.C. No.6704/2016, pending before learned Judicial Magistrate, First Class, Jalgaon.

2. Respondent filed S.C.C. No.6704/2016 under section 138 and 141 of Negotiable Instruments Act, against (1) Ajanta Cans and Containers Private Limited, Jalgaon, (2) N.S. Bhatt (petitioner), (3) Mahesh Kubal, (4) Nivrutti Daulat Bhandvalkar and (5) Mohan Ananda Koli, alleging that accused company had borrowed amount of Rs.98,000/- from complainant. For repayment of the same, cheque of Rs.98,000/- bearing

no.041225 of Dena Bank, Jalgaon dated 22.06.2016 was given to complainant. When the said cheque was presented for encashment, it was returned to complainant on 09.08.2016 with remark, "*Bank has been Closed*". Complainant issued legal notice dated 23.08.2016 to accused. Accused nos.1, 4 and 5 have not accepted the said notice. Accused nos.2 and 3 received the said notice on 25.08.2016. In spite of receipt of notice, accused failed to pay the cheque amount within 15 days. Learned Magistrate by order dated 09.05.2017, issued process against accused under section 138 of the Negotiable Instruments Act.

3. Heard learned advocate for petitioner. Though served, none appeared for respondent. Perused the writ petition memo, annexures thereto, and impugned order.

4. It is the case of petitioner that he is not at all concerned with accused no.1-company. He has replied the notice of respondent stating that he is not concerned with accused no.1-company and the cheque is not issued by him. Documents of complainant-company and accused no.1-company are placed on record in support of these contentions. Petitioner is Chairman of Sumeet Sadan Co-operative Housing Socieity Limited, Mahim (West) and Mr. Mahesh Kubal is

Secretary. Director of complainant-company had some dispute with the Co-operative Society and its office bearers, the society therefore complained against Ajay Agrawal to the Commissioner of Police on 15.07.2016 and only with a view *mala fide* intention to give counter blast to the complaints lodged by petitioner, being chair of the said Co-operative Housing Society, his name is implicated in the present complaint.

Further submission is that though petitioner and other accused persons named in the complaint are resident of Mumbai, learned Magistrate has failed to follow mandatory procedure under section 202 of the Code of Criminal Procedure. In support submissions, reliance is placed on ***K.K. Ahuja Vs. V.K. Vora and another, (2009) 10 SCC 48*** and ***Ganesh Sahakari Sakhar Karkhana Ltd & Ors. Vs. Bharat Trading Company Through it's Proprietor & Ors. 2014(2) Bom. C.R.(Cri.) 760***.

5. Perusal of documents in respect of complainant-company and accused no.1-company shows that petitioner is no way concerned with accused no.-1 company. Company muster data of complainant-company shows that Ajay Rameshwar Agrawal and Nisha Ajay Agrawal are the Directors

of the said company and its registered address is C-702, Sumeet Sadan, B.K. Road, Near Paradise, Mahim (West), Mumbai 400016.

Company muster data of accused no.1-company shows that Nisha Ajay Agrawal and Vilas Balkrushna Varaikar are Directors of accused no.1-company and its registered address is 201, Devki Apartments, E-27/28, Saket, Indore, MP 452018. It is pertinent to note here that, directors of complainant-company have authorized Vilas Balkrushna Varaikar to file the complaint on behalf of complainant-company. In fact, he should have been arrayed as accused. Thus, there is merit in the contention of petitioner that his name is *malafidely* implicated in the present complaint out of personal grudge of the Director of complainant-company. The petitioner’s case is therefore squarely covered by clause no.7 of paragraph 102 of ***State of Harayana & Ors. Vs. Bhajan Lal & Ors. 1992 Supp (1) SCC 335***.

6. Learned advocate for petitioner is right in contending that a vague statement is made in the complaint that accused nos.2 to 5 looking after day-to-day business of accused no.1-company and they are jointly and personally liable for business of accused no.1-company. There is nothing

on record to show that what position petitioner is holding in accused no.1-company and how he is responsible for day-to-day business of accused no.1-company.

7. In ***K.K. Ahuja Vs. V.K. Vora and another*, (2009) 10 SCC 48**, wherein it is held:

> *"19. This takes us to the next question under sub-section (1) of section 141, as to: (i) who are the persons who are responsible to the company for the conduct of the business of the company, and (ii) who could be said to be in charge and was responsible to the company for the conduct of the business of the company. ....*
>
> *20. ....*
>
> *21. A combined reading of Sections 5 and 291 of Companies Act, 1956 with the definitions in clauses (24), (26), (30), (31), (45) of section 2 of that Act would show that the following persons are considered to be the persons who are responsible to the company for the conduct of the business of the company :*
>
> *(a) the managing director(s);*
> *(b) the whole-time director(s);*
> *(c) the manager;*
> *(d) the secretary;*
> *(e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;*
> *(f) any person charged by the Board with the responsibility of complying with that provision (and who has given his consent in that behalf to the Board); and*
> *(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors.*

> *It follows that other employees of the company, cannot be said to be persons who are responsible to the company, for the conduct of the business of the company.”*

Aforesaid observations support the case of petitioner.

8. Petitioner is resident of Mumbai and complaint is filed at Jalgaon, without following mandatory inquiry under section 202 of the Code of Criminal Procedure, as is held in ***K.T. Joseph Vs. State of Kerala, 2009(15) S.C.C. 199***, learned Magistrate has issued process against petitioner. On that ground also the impugned order is unsustainable.

9. For the aforesaid reasons, writ petition succeeds. Hence, the following order:

ORDER

(i) Writ Petition is allowed.

(ii) Complaint and further proceedings in S.C.C. No.6704 of 2016, pending in the Court of learned Judicial Magistrate, First Class, Jalgaon, under sections 138 and 141 of Negotiable Instruments Act, and section 204 of the Code of Criminal Procedure, is hereby quashed and set aside to the extent of petitioner.

[NITIN B. SURYAWANSHI]
JUDGE