

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.430 OF 2023

1. Manganga Sahakari Sakhar Karkhana Ltd. ...Applicants
[Matter is dismissed as against Applicant No.1
as per the Order dated 02/05/2023]
2. Mr. Nathajirao *alias* Rajendra Deshmukh & Ors.

Versus

- Gurudatta Sugars Marketing Pvt. Ltd. & Anr. ...Respondents

Mr. Ansh Karnawat i/b Indrajeet Hingane, for the Applicants.
Mr. H. S. Venegavkar a/w Mr. Manoj M. Sabale, for Respondent No.1.
Mr. C. D. Mali, APP, for the Respondent No.2 – State.

CORAM: MADHAV J. JAMDAR, J.
DATED: 11 DECEMBER 2024

P.C.:

1. Heard Mr. Karnawat, learned Counsel for the Applicants, Mr. Venegavkar along with Mr. Sabale, learned Counsel for Respondent No.1 and Mr. Mali, learned APP, for the Respondent No.2 – State.
2. The challenge in the present Criminal Application filed under Section 482 of the *Code of Criminal Procedure, 1973* is to the Order dated 20th February 2023 passed by the learned 7th Judicial Magistrate First Class, Kolhapur below Exhibit-79 in S.C.C. No.2950 of 2020

(“**impugned Order**”). In the said Application bearing Exhibit-79 filed in S.C.C. No.2950 of 2020 relief is sought under Section 143A of the *Negotiable Instruments Act, 1881* (“**NI Act**”). It is contended in the said Application that the interim compensation for a sum of Rs.10,00,00,000/- i.e. 20% of total cheque amount of Rs.50,00,00,000/- be directed to be paid by all the accused persons jointly and severally. The prayer clause (B) of the said Application, reads as under:

“B. The interim compensation of for sum of Rs. 10,00,00,000/- i.e. 20% of total cheque amount viz. Rs. 50,00,00,000/- may kindly be saddled on all the Accused jointly and severally and may kindly be directed to be given to the complainant.”

3. It is the submission of Mr. Karnawat, learned Counsel for the Applicants that Section 143A of the NI Act provides that the Court trying an offence under section 138 of the NI Act may order the drawer of the cheque to pay interim compensation to the complainant, and by no stretch of imagination the Applicants who are Directors of the Manganga Sahakari Sakhar Karkhana Ltd. (“**Sakhar Karkhana**”) can be held to be the drawer of the cheque for the purpose of Section 143A of the NI Act and can be saddled with liability under Section 143A of the NI Act. To substantiate said contention, he relied of the decision of the Supreme Court in *Shri Gurudatta Sugars Marketing (P) Ltd. v. Prithviraj Sayajirao Deshmukh*¹. In the said decision, the Supreme Court has held

¹ (2024) 246 Comp Cas 1

that primary liability for an offence under Section 138 lies with the company and the company's management is vicariously liable only under specific conditions provided in Section 141. It has been further held that the directors or authorised signatories would not come under the ambit of drawer for the purposes of Section 143A of the NI Act.

4. A learned Single Judge while issuing notice by Order dated 2nd May 2023 has recorded the statement of Mr. Ansh Karnawat, learned Counsel for the Applicants on instructions to withdraw the Criminal Application No.430 of 2023 in respect of the Applicant – Manganga Sahakari Sakhar Karkhana Ltd.. Mr. Ansh Karnawat, learned Counsel states that although liberty was granted by said Order dated 2nd May 2023 to said Manganga Sahakari Sakhar Karkhana Ltd. to file a fresh Application, no such Application/Petition is filed. In any case, in terms of the decision of the Supreme Court in the case of *Gurudatta Sugars* (Supra), it is very clear that the responsibility to pay compensation is on the drawer of the cheque and undisputedly drawer of the cheque is Manganga Sahakari Sakhar Karkhana Ltd..

5. In Complaint filed under Section 138 of the NI Act being S.C.C. No.2950 of 2020 in Paragraph No.8, it is specifically mentioned that the cheques are issued by Accused No.1 i.e. Manganga Sahakari Sakhar Karkhana Ltd.. Thus, it is clear that Sakhar Karkhana is the drawer of the cheque and Sakhar Karkhana has to comply with the Order dated

20th February 2023 passed by the learned 7th Judicial Magistrate First Class, Kolhapur below Exhibit-79 in S.C.C. No.2950 of 2020 in terms of the law laid down by the Supreme Court in ***Gurudatta Sugars*** (Supra). As already noted herein above said Sakhar Karkhana withdrew the Criminal Application No.430 of 2023 challenging the impugned Order dated 20th February 2023 and no other Criminal Application has been filed by said Sakhar Karkhana.

6. Thus, it is clear that Accused Nos.2 to 5 are not liable to pay interim compensation of Rs.10,00,00,000/- i.e. 20% amount of the cheque in question under Section 143A of the NI Act.

7. Accordingly, the Criminal Application is allowed in terms of prayer clause (a) only qua the Accused Nos.2 to 5 in S.C.C. No.2950 of 2020.

[MADHAV J. JAMDAR, J.]