

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

**CRIMINAL WRIT PETITION NO. 4563 OF 2022
WITH
CRIMINAL WRIT PETITION NO. 4565 OF 2022**

Nitin Lalasaheb Phadtare And Anr. ...Petitioners
Versus
M/s Systematic Infotech Pvt. Ltd. And Anr. ...Respondents

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Adv. Prajit Manjrekar a/w Mr. Sandip Karnkar, Advocate for the
Petitioners.

Mr. Anil Dubey, Advocate for Respondent No.1.

Mr. Arfan Sait, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 25th JANUARY, 2024.

P.C.:

1. The Petitioners have preferred these Petitions challenging the Order of issuance of process dated 23rd March, 2016 passed by the learned Magistrate against the Petitioners and the Order dated 21st November, 2022 passed by learned Magistrate directing Accused to record plea.

2. The Respondent No.1 filed complaint for offence under Section 138 of Negotiable Instruments Act, 1881 (for short 'N.I. Act').

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3. The brief facts of the complaint are as under:

i. The Accused No.1 is Private Limited Company. The Accused Nos.2 to 8 are the Directors who are responsible for day to day affairs, management of the company of Accused No.1 and in consultation with each other they have place the purchase order with the complainant. All the Accused have visited the office of complainant, discuss the purchase of laptop and assured to clear the amount. Accused Nos.2, 4 and 6 have signed the cheques.

ii. The Accused had placed orders for the supply of laptops. The complainant raised invoice for Rs.19,72,000/- dated 20th February, 2015. The Accused received the goods. They did not complaint about the quality.

iii. In discharge of liability, the Accused issued cheque dated 22nd March, 2015 drawn on Corporation Bank for some of Rs.19,72,000/- in favour of complainant. The Accused made part payment of Rs.72,000/-, leaving balance amount of Rs.19,00,000/-.

iv. The cheque was deposited. It was dishonoured on account of 'Insufficient Funds'. Demand notice was sent to the Accused. The payment was not made. Complaint was filed on

27th July, 2015.

4. Vide order dated 23rd March, 2016 process was issued against the Accused for the offence under Section 138 of N.I. Act.

5. The complainant preferred an application dated 11th December, 2019 for direction to Accused Nos.2 to 8 to sign plea on behalf of Accused No.1 company. It was contended that Accused No.2 is the Managing Director and other Directors and signatory of cheque have refused to sign the plea on behalf of Accused No.1 company. The Accused are trying to protract the proceedings. Reply was filed on behalf of Accused Nos.3, 4, 5 and 8 opposing the said application.

6. Vide Order dated 21st November, 2022, the learned Magistrate directed to Accused Nos.2 to 8 to record plea on behalf Accused No.1.

7. In Criminal Writ Petition No.4563 of 2022 the Petitioners have challenged the order issuing process whereas in Criminal Writ Petition No.4565 of 2022, the Petitioners have challenged the Order dated 21st November, 2022 directing the Accused to sign the plea on behalf of Accused No.1.

8. Learned Advocate for Petitioners submitted that cheque was issued for amount of Rs.19,72,000/-. The amount of Rs.72,000/- was paid to the complainant. The balance amount was Rs.19,00,000/-. The complainant deposited the cheque issued for an amount of Rs.19,72,000/- without making an endorsement on the instrument with regards to the existing of liability in accordance with Section 56 of N.I. Act. The cheque was issued by Unity IT Technology Pvt. Ltd. The said company is not an Accused. Complainant has impleaded M/s. Unity Technology Pvt. Ltd. as Accused No.1 The drawer company is not Accused. Applicants cannot be prosecuted by involving Section 141 of N.I. Act. There are no sufficient averments to invoke Section 141 of N.I. Act. No specific role is attributed to Petitioners. The Petitioners are not signatory to the cheque. It is not stated in the complaint that the Petitioners are responsible for day to day affairs of Accused No.1 company.

9. Learned Advocate for the Petitioner has relied upon the following decisions :

i. Dashrathbhai Trikambhai Patel V/s. Hitesh Mahendrabhai Patel & Anr., 2022 ALL SCR (Cri) 2097.

ii. National Small Industries Corporation Limited V/s. Harmeet Singh Paintal And Another, (2010) 3 SCC 330.

iii. Aneeta Hada V/s. Godfather Travels And Tours, (2012) 5 SCC 661.

iv. S.M.S. Pharmaceuticals Ltd. V/s. Neeta Bhalla And Anr., dated 20th September, 2005.

10. Learned Advocate for Respondent submitted that demand notice was for Rs.19,00,000/- as Rs.72,000/- were paid. The decisions relied upon by the learned Advocate for the Petitioners were delivered at the stage of appeal after the trial was over. There are sufficient averments in the complaint. There is no infirmity in the complaint in relation to the name of the company. The invoices and laptops are on record. The name of the company reflected in complaint is the typographical error. The Accused is aware about the issuance of cheque and in whose favour it was issued. The grounds urged by the learned Advocate for the Petitioners are required to be adjudicated during the trial. There was no infirmity in the order directing the Accused to sign plea. The Accused are delaying the proceedings. Letter dated 21st September, 2015 was sent to Respondent No.1 stating that meeting was held with Director of Respondent No.1 on 5th August, 2015. Schedule of

payment was issued. It was signed by Directors.

11. Learned Advocate for the Respondent has relied upon the following decisions :

- i. Bhupesh Rathod V/s. Dayashankar Prasad Chaurasia & Anr., (2021) 7 S.C.R. 319.*
- ii. M/s. Ramnath Exports Pvt. Ltd. V/s. Vinita Mehta & Anr., passed by the Supreme Court in Civil Appeal No.4639 of 2022 dated 5th July, 2022.*
- iv. K.P. Ramachandran Nair V/s. State of Kerala, 2022 LiveLaw (Ker) 592.*
- v. Varun Pahwa V/s. Mrs. Renu Chaudhary, (2019) 4 S.C.R. 128.*
- vi. Dilip Hariramani V/s. Bank of Baroda, (2022) 4 S.C.R. 615.*
- vii. Pawan Kumar Goel V/s. State of U.P. & Another, (2022) 10 S.C.R. 102.*
- viii. S.P. Mani And Mohan Dairy V/s. Dr. Snehalatha Elangovan, 2022 LiveLaw (SC) 772.*

12. The Petitioners are impleaded as Accused Nos.5 and 8 in the impugned complaint. The complainant has alleged that

Accused Nos.2 to 8 are Directors who are responsible for day to day affairs, management of the company of Accused No.1 and in consultation they placed purchase orders with the complainant. The Accused visited the office of complainant and discussed about purchase of laptops. It is pertinent to note that the Petitioners are Directors of the company. They are not signatory to the impugned cheques. The complaint does not mention that at the time the offence was committed the Petitioners were incharge and were responsible to the company for the conduct of the business of the company as well as the company. The complaint mentions that the Petitioners are Directors and responsible for day to day affairs and management of the company. The complaint also refers to the vague overtact attributed to all the Accused. There is no other material on record to justify the invocation of vicarious liability against the Petitioners. The letter dated 12th September, 2015 is not part of complaint. The letter is issued after filing evidence. The proceedings will have to be quashed against the Petitioners on the ground of lack of sufficient averments in complainant to invoke Section 141 of N.I. Act.

13. In the case of *National Small Industries Corporation Limited* (supra), it is held that the complaints should specifically

spell out how and in what manner the Director was incharge of or was responsible to the Accused company for the conduct of its business. Mere bald statement that he was incharge of and was responsible to the company for the conduct of its business is not sufficient. There other subsequent decisions which have reiterated the law relating to vicarious liability under Section 141 of the N.I. Act.

14. It is not necessary to adjudicate on the other issues and as the order issuing process and the proceedings are required to be quashed against the Petitioners on the aforesaid ground. It is not necessary to deal with impugned Order dated 21st November, 2022 as the proceedings are quashed against the Petitioners.

ORDER

- i. Criminal Writ Petition No.4563 of 2022 is allowed and disposed off;
- ii. The impugned order dated 23rd March, 2016 passed by learned Metropolitan Magistrate, 14th Court Girgaon, Mumbai and proceedings in C.C. No.2586 of 2014 pending before the Court of learned Metropolitan Magistrate, 14th Court Girgaon, Mumbai are quashed and set aside as against Petitioners.

iii. Criminal Writ Petition No.4565 of 2022 is disposed off;

(PRAKASH D. NAIK, J.)