IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
Criminal Writ Petition No.766 of 2024

Nirmal Kumar Modi
Age 45 Years, Occ:-Chartered Accountant
Having permanent address at Room No.101, I-Block, panchasheel Apt, Kolkata,
Presently residing at :- 501, Navigation Station Approach, Hayes, U.K. ... Petitioner

Versus

1. Sprite Investments Pvt Ltd
A Company registered under the Companies Act, 1956, having its registered office at 1, Hitex Industrial Estate, S.V. Road, Dahisar (East), Mumbai-400 068.
Through its Authorized representative and POA Mr Rakesh A. Jain

2. The State of Maharashtra ... Respondents.

Ms Akshaya Putharan along with Devashree Deshpande i/by SK Singhi & Partners LLP for the petitioner.
Mr Santosh Thakur for respondent No.1.
Ms Shilpa Talhar, APP for respondent No.2/APP.

Coram : R. N. Laddha, J.
Date : 3 May 2024.

P.C. :

Heard Ms Akshaya Putharan, the learned Counsel representing the petitioner, and Mr Santosh Thakur, the learned Counsel appearing on behalf of the first respondent.

2. The petitioner, who is an accused in CC No.1483/SS/2011, has filed this petition to challenge the order dated 04.10.2023 passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai, in Criminal Revision Application No.234 of 2022. The impugned order confirmed the order dated 10.01.2012 of the learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai, whereby a process was issued against the petitioner and others for the offence punishable under Sections 138 read with 141 of the Negotiable Instruments Act, 1881 (for short, the 'NI Act').

3. The complainant alleges that accused No.1, Ruia Sons Private Limited, is a private limited company incorporated under the provisions of the Companies Act, 1956, and the other accused are the Directors of the accused No.1, and are in-charge of are/or responsible for the day-to-day affairs of the company. The petitioner (accused No.5) is a joint signatory of the disputed cheque.

4. The complainant alleges that as the accused Company was in need of financial assistance, the accused approached

the complainant requesting for an Inter Corporate Deposit of Rs.5,00,00,000/- for interest at the rate of 16.5% p.a. Consequently, after execution of a loan agreement and an agreement to pledge shares on 06.04.2011, the complainant disbursed Rs.5,00,00,000/- to the accused.

5. It is the case of the complainant that in discharge of the above liability, the accused issued the disputed cheque for Rs.19,73,219/- towards partial discharge of the outstanding dues. In October 2011, the cheque was presented for encashment, but it was dishonoured. After the necessary mandate, the complainant filed a complaint under Section 138 of the NI Act before the trial Court and a process was issued against the accused.

6. Ms Akshaya Putharan, the learned Counsel for the petitioner, invites the attention of this Court to Form 32 issued by the Registrar of Company, to contend that the petitioner cannot be held responsible for the dishonour of the cheque dated 19.10.2011 after his resignation from the company on 29.06.2011.

7. The learned Counsel argues that the complainant's statement that all the directors are responsible is insufficient,

and each director must be assigned a specific role. The complainant obtained an order of issue process by suppressing material facts. In support of her contention, she relied upon the following judgments: ***(i) Siby Thomas Vs Somany Ceramics Ltd., (2024) 1 SCC 348; (ii) Vijay Khairatilal Bhatia Vs Bela Kamlesh Ganeriwala, 2015 SCC OnLine Bom 4705; (iii) B. Raman Vs Shasun Chemicals and Drugs Ltd., 2006 SCC OnLine Mad 757; (iv) Sabitha Ramamurthy Vs R.B.S. Channabasavaradhya, (2006) 10 SCC 581; (v) National Small Industries Corpn. Ltd. Vs Harmeet Singh Paintal, (2010) 3 SCC 330; (vi) Pooja Ravinder Devidasani Vs State of Maharashtra, (2014) 16 SCC 1; (vii) Harshendra Kumar D. Vs Rebatilata Koley, (2011) 3 SCC 351; (ix) DCM Financial Services Ltd. Vs J.N. Sareen, (2008) 8 SCC 1; (x) Anita Malhotra Vs Apparel Export Promotion Council, (2012) 1 SCC 520; and (xi) S.M.S. Pharmaceuticals Ltd. Vs Neeta Bhalla, (2007) 4 SCC 70***.

8. On the other hand, Mr Santosh Thakur, the learned Counsel for the respondent/complainant, submits that the cheque was issued in the year 2011. The petitioner/accused is the joint signatory to the cheque, which he does not deny. The trial is at the fag end. The cross-examination of the

complainant is over. The petitioner/accused as a director of the accused company has also signed the board resolution dated 29.03.2011, authorising one of the director Mr Ashokkumar Goenka to sign and execute the loan agreement, pledge agreement, demand promissory note and such other documents that are required for availing the Inter Corporate Deposit from the complainant. He submits that the defence of the petitioner is required to be considered on merit and not at this stage of the trial. He further argues that there are certain presumptions in favour of the complainant under Section 139 of the NI Act, and it is for the accused to rebut the presumption. To support his contentions he relied on ***(i) Kirshna Texport & Capital Markets Ltd. Vs Ila A. Agrawal, (2015) 8 SCC 28; (ii) Vishal Arora Vs Yes Bank Ltd., 2022 SCC OnLine Del 3964; (iii) K.K. Ahuja Vs V.K. Vora, (2009) 10 SCC 48; and (iv) National Small Industries Corpn. Ltd. Vs Harmeet Singh Paintal, (2010) 3 SCC 330***.

9. In the present case, it is not in dispute that the cheque in question was dishonoured. During the course of the argument, the learned Counsel for the petitioner disputes not only the signature of the petitioner on the cheque but also the receipt of the statutory notice, these aspects require trial.

10. In *SMS Pharmaceuticals (supra),* it was observed by the Hon'ble Supreme Court that the signatory of a cheque which is dishonoured is concerned, is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141 of the NI Act.

11. Moreover, the scope of a writ petition challenging the order of the revisional Court which confirms the order of issuance of process is limited. By a catena of judicial pronouncements, the legal position is clear that the merits of the defence should not be considered at the stage of cognizance. Admittedly, the trial is at the advance stage as the complainant's cross-examination is already over.

12. In light of the above, this criminal writ petition stands dismissed.

[R. N. Laddha, J.]