IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1042 OF 2024

Inu w/o Abhijit Majumdar }
Age about 42 Years, Occupation : Business, }
Residing at : Plot 10-A, Bhagwaghar Layout, }
Behind Alankar Cinemas, Dharampeth, }
Nagpur. } ...**Applicant**

Versus

Prism Johnson Ltd. }
Having its Office at Rahejas, 2nd Floor, }
Main Avenue, V.P.Road, Santacruz (West), }
Mumbai – 400054. }
Through its Authorised Representative: }
Tanu Shamsunder Parab, Aged about : 52 Years}
Occupation : Service. } ...**Respondent**

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Mr.Chinmay Dharmadhikari a/w Mr.Anish Khandekar:-	Advocates for Applicant.
Mr.Raghavendra Mehrotra i/b. Lawkhart Legal:-	Advocate for Respondent.
Mr.N.B.Patil:-	APP for Respondent-State.

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CORAM : S. M. MODAK, J.

DATE : 12th AUGUST 2025

ORAL ORDER :-

1. Heard learned Advocate for the Applicant / Accused No.3 and learned Advocate for the Respondent / Complainant.

2. The Court of then Metropolitan Magistrate, 28th Court, Esplanade – Mumbai as per the order dated 27th June 2023 "*issued a process*" against the Accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ("**NI Act**"). The learned Magistrate has gone through the Verification Affidavit so also the Affidavit contemplated for an inquiry under Section 202 of the Code of Criminal Procedure, 1973 ("**Cr.P.C.**"). There were 3 Accused persons. The Accused No.1 is the Company whereas the Accused No.2 is the signatory to the cheque and is Director and the Accused No.3 is the present Applicant who is the Director against whom there are allegations in paragraph No.17 of the Complaint. It pertains to participation of the present Applicant in the day to day affairs of the Company.

3. By way of this Application, there is a prayer to quash the order of "*issuance of process*". When **there is an objection about the maintainability of the Application** in view of the remedy of Revision available, learned Advocate for the Applicant relied upon the observations in the following judgment:-

(i) ***Vijay and Another V/s. State of Maharashtra and Another***[1]

(ii) A similar issue was involved before the Hon'ble Supreme Court.

1 (2017) 13 Supreme Court Cases 317

On the basis of the observations in case of ***Prabhu Chawla V/s. State of Rajasthan***[2], it was held that:-

> "*Just because there is an alternate remedy available, it will not disentitle the Petitioner to seek a relief under Section 482 of Cr.P.C.*".

The High Court in that case has dismissed the Application in mechanical way without appreciating the factual and legal position (Para No.8). The matter was remanded to the High Court for reconsideration. In view of the above observations, I am entertaining the Application. The facts and circumstances will decide whether the relief can be granted or not.

4. Learned Advocate for the Applicant made following submissions:-

(a) He invited my attention to the averments in the relevant paragraphs of the Complaint. They are, **paragraph Nos.3,4 and 11** pertaining to averring the involvement of the present Applicant.

(b) **Paragraph No.4** about the transaction in between the Complainant as a seller of ready mixed concrete and the Accused No.1–Company being the purchaser and the Accused Nos.2 and 3 taking part in the transaction.

(c) **Para No.10** about certain liability of payment and liability is restricted only in respect of one dishonour cheque.

2 2016 16 SCC 30

5. According to him, on the basis of the above averments, **it cannot be said that the Accused No.3 can be held vicariously liable**. To support his contentions, he relied upon the observations in following judgments:-

(i) ***National Small Industries Corporation Limited V/s. Harmeet Singh Paintal and Another***[3]

(ii) ***Susela padmavathy Amma V/s. Bharti Airtel Limited***[4]

6. By way of reply, learned Advocate for the Respondent / Complainant made following submissions:-

(a) At the time of "*issuance of process*", the learned Magistrate is not supposed to inquire about the averments in detail but he has to be prima facie satisfied about the "*issuance of process*".

(b) In this case, there were material averments showing the involvement of the present Applicant in the offence.

(c) He invited my attention to the Company Master Data on Page No.52 wherein the Applicant is shown as one of the Directors of the Accused No.1 – Company.

7. The observations made in the above two judgments are binding on all of us. In case of ***National Small Industries Corporation Limited*** (*cited supra*), after taking an overview of the matter, the Hon'ble Supreme Court has laid down certain principles to be followed while dealing with a quashing Petition. They are in paragraph No.39. There

3 (2010) 3 Supreme Court Cases 330

4 2024 SCC OnLine SC 311

are certain excluded categories so to say the Managing Director or a Joint Managing Director and a person who has signed the cheques, their request for quashing the issue process order cannot be entertained in an Application under Section 482 of Cr.P.C.

8. After reading those principles, what the Court is required to see is if the Complainant pleads a vicarious liability on the part of a natural person, **he need to plead it and prove it and it cannot be inferred**. Merely because the Accused is a Director **is not sufficient to fasten the liability**. If the liability is to be fastened, **then there has to be certain specific averments denoting that he is involved in the day to day affairs of the Company and responsible to the management for the conduct of the business**.

9. If we apply these principles to the facts before me, what I can find is no doubt there are averments showing the involvement of the Applicant in the transaction of purchase of ready mixed concrete. There are averments showing that the Applicant is involved in the day to day affairs. There are two aspects. **First one** is involvement in entering into the transaction and **second is** about having knowledge about issuance of the cheque, its dishonour and failure to make the payment. Just because the Applicant is involved in the transaction of

purchase, **it cannot be inferred that the Applicant can be held vicariously liable for an offence punishable under Section 138 of the NI Act**.

10. Because what is important for prosecution under Section 138 of the Act **is the failure to make the payment after receipt of notice**. As said above, there are only general allegations that the Applicant is involved in the day to day affairs. As said above, these allegations are not sufficient to attract the vicarious liability. **The Complainant ought to have pleaded in what manner the present Applicant is involved in the process of issuance of cheque, its dishonour and its failure after receipt of notice**. These averments are missing in the Complaint.

11. The learned Magistrate has "*issued a process*" on the basis of the averments in the Complaint. However, when the Applicant has appeared and agitated the issue about non-compliance of the provisions of Section 141 of NI Act as interpreted, the Court is bound to look into these aspects. When this exercise is done, I am afraid that the Complainant is justified in prosecuting the Applicant / Accused No.3. **The order of "*issuance of process*" needs to be set aside**. The submissions advanced can certainly looked into on bare perusal of averments in the Complaint and it does not require detail scrutiny.

12. Hence the following order:-

O R D E R

(i) **The Application is allowed**.

(ii) The order of "*issuance of process*" dated 27st June 2023 passed by the Court of then Metropolitan Magistrate, 28th Court, Esplanade, Mumbai below Exhibit-1 in C.C.No. 2801260/SUM/2022 **is quashed and set aside**.

(iii) **The Complaint stands dismissed against him**.

(iv) The trial Court to proceed against rest of the Accused as per law.

13. With these observations, **the Application stands disposed of**.

[S. M. MODAK, J.]