2025:BHC-NAG:7021

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 1747 OF 2024

HVR Projects Pvt. Ltd. Through its Director Rajan Manoharlal Dhaddha
Vs
Bajrang Steel Traders through its Partners and one another

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order
Mr. R.M. Daga, counsel for applicant. Mr S.S. Sitani, counsel for non-applicant/State.	

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 04/07/2025.

1. By this application, applicant who is the original accused No.4 seeking quashing of the criminal complaint bearing No. 10723/2020.

2. The brief facts which are necessary for disposal of the application are as under.

In the year 2023, the applicant became Director of a private limited company, namely “A HVR Project Pvt. Ltd,” having its registered office at Kolkata. The daily affairs of said company were being looked into by the various directors, including the present applicant. The company was dealing with business and the business of steel, and the business relations were also developed with the respondent No.1-company. It is alleged that out of the business relationship, there was a transaction between them and the HVR company i.e. accused No.1 was found to be in arrears of Rs. 39,45,856/- for the transactions between 16/05/2018 and 29/05/2018. Since the dues were not cleared, therefore, nine cheques having different amounts were issued by HVR Project Private Limited in favour of respondent No. 1, signed by accused No. 2, and drawn on Axis Bank, Wadi Branch, Nagpur. Thereafter, respondent No.1 presented cheques bearing Nos. 000391, 000392, 000393 and 000394 dated 23/07/2020, amounting to Rs.4,50,000/- each for encashment. The said cheques were deposited but returned unpaid by the bank with an endorsement “Account Frozen” on 15/09/2020. Thereafter, the notice was issued to the Directors as well as company on 18/09/2020. After receipt of the notice also, the company and directors have not paid the amount, and therefore, criminal complaint came to be lodged against the company and all the directors. The 19th Additional Chief Judicial Magistrate, Nagpur, had taken cognizance and issued the process against the present applicant, and therefore, he approached this Court for quashing of the order of issuance of summons as well as quashing of the complaint.

3. Heard learned counsel for the applicant, who submitted that ground raised in the application is that the applicant became director on 26/12/2013 and resigned on 19/01/2019. He invited my attention towards the DIR form No. 11, which is submitted by the present applicant, showing his resignation as well as a certificate issued by Company Secretary showing that the present applicant

submitted his resignation on 19/01/2019, and since then, he seems to be a director of the said company.

He submitted that as of the date of issuance of the cheque the present applicant was not in-charge of and was not dealing with the business of the company, and therefore, in view of Section 141 of the Negotiable Instruments Act, no liability can be fastened on him, and therefore, issuance of process order deserves to be quashed and set aside.

4. In support of his contention he placed reliance in the case of ;-

a) ***Rajesh Viren Shah Vs Redington (India) Limited AIR 2024 SC 1047***;

b) ***Adhiraj Singh Vs Yograj Singh and others in SLP (Crl) Nos. 16051-16052 of 2023 decided on 02/02/2024,*** **and**

c) Harshendra Kumar D Vs Rebatlilata Koley and others (2011) 3 SCC 351.

5. Per contra, learned counsel for the original complainant strongly objected for the same and submitted that the applicant was Director and was dealing with the day-to-day business of the company. In his presence, the cheque was issued and after dishonored of the cheque, the notice was issued, which was not replied by the present applicant. After issuance of the summons also, he has not responded and not appeared before the Court. Thereafter,

non-bailable warrant was issued, he was arrested and produced before the Court. After his arrest also, he has not made such type of contention before the Court, and subsequently filed the application. Thus, after this stand is taken by the present applicant, at the most this aspect can be dealt with by the court at the time of the trial.

6. He further submitted that in a complaint, he specifically took a stand that present applicant was in-charge of the company and dealing with the day-to-day business of the said company. Moreover, there is no document to show that the applicant ceased to be a director from the date of his resignation i.e. from 19/01/2019. In view of that, the application is devoid of merits and deserves to be dismissed.

7. On hearing both sides and on perusal of the recitals of the complaint and the other documents. Undisputedly, there was a business transaction between the company, namely HVR Projects Private Ltd. and Bajarang Steel Traders i.e. the complainant, who is the respondent here. The recitals of the complaint shows that the accused company purchased goods from the complainant and there were a series of transactions. Hence, the complainant has maintained a ledger account. The amount of Rs.39,45,856/- was duped against the said company, and against the said legal and enforceable debt, nine cheques were issued by the company signed by the accused No.2 in favour of the complainant, which were

deposited by the complainant, and the same were returned with the endorsement “accounts closed.” The same was intimated to the complainant on 15/09/2020. The legal notice was issued on 18/09/2020 by way of RPAD. After receipt of the notice, also the amount was not paid, and hence the complaint was filed.

8. Before adverting to the merits of the case, it is necessary to reproduced the Section 141 of the N.I.Act.

Section 141 in The Negotiable Instruments Act, 1881

> ***141. Offences by companies.*** *— (1)If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:*
>
> *[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]*
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> *(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act*

has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

9. Learned counsel for the applicant placed reliance on the decision of ***Rajesh Viren Shah*** referred (supra) wherein the Hon'ble Apex Court has considered this aspect and observed that appellants were arraigned as an accused in a complaint filed for dishonoured of cheque issued by company. Appellants had resigned from the post of Directors of Company before issuance of cheques. Resignations of appellants were not questioned by complainant. Appellants were not responsible for the conduct of the affairs of the company at the time of the issuance of cheques, and proceeding against appellants were liable to be quashed.

10. In the case of ***Adhiraj Singh*** referred (supra), wherein also, this aspect is dealt by the Hon'ble Apex Court and observed that, in view of the said factual scenario and in absence of any other other material, the common order was liable to be quashed and set aside. It is also observed that resignation of the director accused wherein was submitted with the Registrar of Company on 05/07/2001 i.e. after the issuance of cheques therein, which were issued on various date in December 2000 and

February 2001. While the accused director maintained that he had intimated his resignation to the company on 02/04/1999. Thus, considering this fact, proceedings against the directors are quashed.

11. On perusal of the provision of Section 141 of the N.I. Act, what is required under Section 141 is that the persons who are sought to be made criminally liable under Section 141 of N.I. Act should be, at the time the offence was committed, in-charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in-charge of and responsible for the conduct of business of the company, at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a director of a company who was not in-charge of and was not responsible for the conduct of the business of the company at the relevant time will not be liable under the provision. The liability arises from being in-charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in-charge of and responsible for the conduct of business of a company at the relevant time.

12. Thus, liability depends on the role one plays in the affairs of a company and not on designation or status. If being a director or manager or secretary was enough to cast criminal liability, the section would have said so. If being Director, Manager, Secretary are not liable by their designations, they are liable if they are discharging the duty by holding responsibility in the day-to-day affairs of the company and, therefore, are the only persons who can be said to be connected with the commission of crime who are in-charge of the said company.

13. Section 141 of the N.I.Act, provides for constructive liability to launch a prosecution, therefore, against the alleged directors, there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be a clear and unambiguous allegation as to how the Directors are in-charge and responsible for the conduct of the business of the company.

14. In the light of the above legal provisions, there is no dispute as to the fact that the applicant, who was joined as a director on 26/12/2013 and resigned on 19/01/2019, submitted the DR Form, which is submitted by the applicant also shows that he resigned on 19/01/2019. The company secretary issued the letter, which also shows that he ceased to be a director for 19/01/2019 as he resigned from the post of directorship

at HVR Projects Private Limited on 19/01/2019. Thus, considering that on the date of issuance of the cheque, the present applicant was not director of the said company, he was not in-charge of the said company, and he was not playing any role as to the day-to-day business of the said company, and as, he has not discharged the duties by holding the responsibility in the day-to-day affairs of the company, and therefore, as observed earlier, only persons who can be connected with the commission of the crime, who are in-charge of the said company. In view of that, the order of issuance of process against the present applicant deserves to be quashed. In view of that, I proceed to pass the following order:

ORDER

a] The issuance of process by order dated 07/12/2020 in Summary Criminal Case No. 10723/2020 passed by Additional Chief Judicial Magistrate, Nagpur, is hereby quashed and set aside.

The criminal application is disposed of.

[**URMILA JOSHI-PHALKE, J.]**

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