

(2014) 12 BOM CK 0163

Bombay High Court

Case No: Criminal Writ Petition No. 2320 of 2014

Hetal Naren Thakore

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision: Dec. 9, 2014

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138, 141

Citation: (2015) 1 BomCR(Cri) 772

Hon'ble Judges: A.M. Thipsay, J

Bench: Single Bench

Advocate: Subodh Desai and Kunal Parekh instructed by K.R. Shekhawat, Advocates for the Appellant; S.V. Gajare, A.P.P, Advocates for the Respondent

Judgement

A.M. Thipsay, J.

Rule. By consent, Rule is made returnable forthwith. By consent, heard finally.

2. The petitioner is one of the accused in C.C. No. 2440/SS/2012 pending before the Metropolitan Magistrate, 43rd Court at Borivali, Mumbai. The said case is in respect of an offence punishable under section 138 of the Negotiable Instruments Act (for short the said Act). The respondent No. 2 herein a Company - is the complainant in the said case. Apart from the petitioner, there are eight other accused in the said case. The accused No. 1 - Shree Ashtavinayak Cine Vision Ltd. - is a company, and the other accused including the petitioner, are being prosecuted on the allegation that they are liable to be prosecuted in respect of the offence committed by the accused No. 1 company by virtue of the provisions of section 141 of the said Act.

3. The petitioner is aggrieved by the order issuing process against him. According to him, there were no sufficient grounds for proceeding against him. He has, therefore, approached this Court by invoking its constitutional jurisdiction and inherent powers, praying that the order issuing process against the petitioner, be quashed and set aside.

4. It was decided by consent that the petition should be decided finally at the admission stage itself. Accordingly, a notice indicating that the petition shall be heard finally, was issued and served upon the respondents. In spite of service of the notice, the respondent No. 2 i.e. the original complainant has not chosen to appear before the Court to oppose the petition.

5. I have heard Mr. Subodh Desai, learned Counsel for the petitioner. He has taken me through the petition, and the annexures thereto. I have carefully gone through a copy of the complaint that is annexed to the petition.

6. Mr. Desai submitted that the petitioner is a practicing solicitor, and that he has been appointed a non-executive director of the accused No. 1 company. It is submitted that the petitioner is not concerned with the day to day activities of the accused company. It is also submitted that the petitioner is not involved in the financial transactions which the accused company undertakes.

7. The only averment against the petitioner, as is found in the complaint, is as follows :

"Accused Nos. 2 to 9 is the Directors of the accused No. 1 company and is involved in day to day activities of the accused No. company.". (para 3 of the complaint)

8. In my opinion, these averments are not equivalent to contending that the petitioner is responsible of the accused company for the conduct of its business. The assertion is merely that he is involved in day to day activities of the accused company.

9. It would be difficult to lay down precisely as to what averment would be sufficient in a given case for proceeding against a Director of the accused company by virtue of the provisions of section 141 of the Act. However, in the instant case, the petitioner is not the Managing Director or signatory to the cheque issued by accused No. 1 company. Considering the fact that the petitioner is a practicing solicitor, the averment that he is involved in day to day activities of the accused No. 1 company, does not seem to be sufficient to fasten liability in respect of the offence upon the petitioner, by virtue of the provisions of Section 141 of the said Act. In the facts and circumstances of the present case, the averments against the petitioner fall short of making out sufficient grounds for proceeding against him.

10. This is particularly so because the petitioner had replied to the demand notice, stating clearly that he was an independent non-executive Director of the accused company, and was legally not liable in the matter. There has been no reference to this notice in the complaint. The respondent No. 2 has not chosen to remain present before the Court, and to oppose the petition.

11. In the circumstances, the petition is allowed.

12. The order issuing process, so far as it relates to the petitioner, is quashed.

13. The complaint, so far as it relates to the petitioner, stands dismissed.

14. The learned Magistrate shall proceed further with the case in accordance with law. Rule is made absolute accordingly.