

MHMM140045532016



-: ORDER BELOW EXH.6 IN 4308/SS/2016 :-

1. The present application is filed by the complainant raising objection to the issue process and for the dismissal of the complaint. It is contending in the application that the complaint is filed on 29th November, 2016 against the accused No.1 Company by name M/s.Legrand (India) Pvt. Ltd. & Ors. (Hereinafter referred to as “Said Company”) and its Directors. My Ld. Predecessor has issued process against all the accused.
2. The Hon'ble Bombay High Court by order dated 06.07.2012 approved the amalgamation between the merger of the said company and Novateur Electrical & Digital Systems Pvt. Ltd. under Section 391 and 394 of the Companies Act. Therefore, according to him, the present complaint against the accused is not maintainable. The accused No.1 Company on 31st August, 2012 before the Registrar of the Companies filled Form No.21 indicating the said merger. The Notices were issued to the accused on 30.04.2015 and 06.10.2015, however, at that time the Company was not in existence and therefore, the complaint is not maintainable. Hence, he prayed for dismissal of the complaint filed against the accused.
3. Per contra, the Ld.A.P.P. have not filed his say and resisted orally.

4. Heard both the Ld.Counsels for the respective parties.
5. The Ld.Advocate of the accused submitted that due to the amalgamation approved by the Hon'ble Bombay High Court dated 06.07.2012. The submission of Form No.21 indicating the merger the said Company is not existence. Therefore, no case is made out against the present accused. He in support of his contention relied on the judgment passed by the Hon'ble Apex Court in the case of *K.M.Mathew Vs. State of Kerala & Ors. in Criminal Appeal No.711 of 1991 decided on 19.11.1991.*
6. Per contra, it is urged by the Ld.Adv. of the complainant that this is the summons case and once issue process order is passed, the Court has no jurisdiction to dismiss the complaint, discharge the accused or recall the process. He relied on the judgment passed by the Hon'ble Apex Court in the case of *Adalat Prasad Vs. Rooplal Jindal reported in Criminal Appeal No.91 of 2002 dtd. 25.08.2004*, wherein it is held that once the issue process order was passed, the Court has no jurisdiction to recall the same.
7. Now coming to the maintainability of the application. It is the fact that the order of issue process is not challenged by the accused. There was a prima-facie case against the accused and therefore, my Ld. Predecessor has passed the order of issue process. Thereafter, none of the accused appeared, the Ld.Advocate appeared on behalf of the complainant and filed the present application. In support of his argument he relied on the judgment in the case of Mathew cited supra. However, the said judgment was subsequently referred by the Hon'ble Supreme Court in the case of Adalat Prasad, wherein it is

held that once the order of issue process is passed, the Court has having jurisdiction to recall it. Though the title of the application suggests that it is for the dismissal of the complaint, however, contents shows that it is for recall of the process. Therefore, in my view once the issue process order is passed by this Court, it is not having jurisdiction to recall the same. Hence, application is liable to be rejected on the ground of the maintainability itself.

8. So far as the argument of the Ld.Defence Counsel of the merger etc. is concerned, these are the documents and facts raised by the accused in his defence. It is well settled law that while passing order to issue process, the Court has to see the averments in the complaint and documents filed along with the complaint. Therefore, on the basis of the complaint and documents filed along with the complaint, issue process order was passed. Whatever ground was raised by the accused in his defence cannot be considered at this stage. Hence, application is liable to be rejected. At the same time, it will be proper to direct the accused to remain present on next date. Hence, I pass the following order -

-: ORDER :-

1. Application is rejected.
2. Accused are directed to remain present on next date.
3. The application of the complainant for issuance of the bailable warrant against the accused kept for order on next date.

Mumbai.
Date :- 17/02/2021.
Gsu/-

(N. A. Patel)
Metropolitan Magistrate,
40th Court, Girgaon, Mumbai.