

MHCC050047512019



Presented on : 31-08-2019
Registered on : 31-08-2019
Decided on : 28-04-2023
Duration : 3 years, 7 months, 28 days

**IN THE COURT OF SESSIONS AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI**

REVISION APPLICATION NO.226 OF 2019

Mr. Chandulal Jain
Having address at Neev Vittoria,
Nesbit Road, Next to Mazgaon
Sales Tax Office,
Mumbai – 400 010

....Applicant
(Orig. Accused No.3)

V/s.

Navnit Co-Op. Housing Society Limited
Registered under the Maharashtra Co-
Op. Societies Act, 1960
Having address at J-89, Navnit,
Bharawadi Road, Andheri (W),
Mumbai – 400 058

....Respondent
(Orig. Complainant)

Adv. Chetan Pawar for applicant.
Adv. Siddhant Dalvi h/f Barkha Shroff for respondent.

**CORAM : H.H. Additional Sessions Judge,
Shri S. N. Salve.**

Court Room No.15.

Date : 28th April, 2023

JUDGMENT

By this application under section 397 of the Code of Criminal Procedure, applicant questions the correctness, legality and propriety of the order dated 14.02.2019 in C.C.No.598/SS/2019 whereby the learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai issued process against the applicant/accused for commission of offence punishable under Sec.138 read with Sec.141 of the Negotiable Instruments Act (for short, N. I. Act).

2. For the sake of convenience, the parties would be referred to as per the array in C.C. No.598/SS/2019 filed before the learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai.

3. The brief facts giving rise to the present Revision Application are that the complainant Housing Society instituted complaint under Sec.138 read with Sec.141 of the N. I. Act against the accused Nos.1 to 4. After examination of complainant on affidavit, the Ld. Metropolitan Magistrate was pleased to issue process against accused Nos.1 to 4 for commission of the offence under Sec.138 r/w Sec.141 of the N. I. Act.

4. Being aggrieved and dissatisfied with the order passed by the Ld. Metropolitan Magistrate, the accused No.3 preferred this Revision Application on the ground that the impugned order of the issuance of process is bad in law, the Ld. Metropolitan Magistrate ought not to have issued process against him as at the time of commission of the offence, he was not the Director of the accused No.1 Company nor responsible for day-to-day transactions.

According to accused No.3, on these grounds alone the order of issuance of process passed by the Ld. Metropolitan Magistrate is not legal, proper and correct and it requires to be quashed and set aside. Lastly, the accused No.3 prayed that the order of issuance of process be quashed and set aside.

5. The complainant opposed the Revision Application by filing affidavit-in -reply vide Ex.3. It is submitted by the complainant that the accused were liable to pay the amount of the cheque. Therefore, there is no merit in the Revision Application. The complainant supported the order passed by the Ld. Metropolitan Magistrate. The complainant, therefore, prayed that the Revision Application be dismissed.

6. I have heard the Ld. Advocate for the accused No.3 and the Ld. Advocate for the complainant.

7. The Ld. Advocate for accused No.3 submitted that the accused no.3 was not the Director of the accused No.1 Company when the cheques in question were issued nor signatory to the cheques, therefore in view of the provision of Sec.141 of the N. I. Act, no process could have been issued against the present accused No.3. He, therefore, submitted that the impugned order passed by the Ld. Metropolitan Magistrate is not legal, proper and correct and it requires to be quash and set aside.

8. On the other hand, the Ld. Advocate for the complainant argued that initially the accused No.3 was part of the

Development Agreement that has been signed between the society and the applicant. It is further submitted that the Form 32 which is being relied by accused No.3 is not certified copy. Lastly, the complainant prayed that there is no merits in the Revision Application. The complainant, therefore, prayed that Revision Application be dismissed.

9. The points for determination along with my findings with reasons thereon are as follows:-

Sr.No.	<u>POINTS.</u>	:	<u>FINDINGS</u>
1.	Whether the impugned Order dated 14.02.2019 in C.C.No.598/SS/2019 whereby the learned Metropolitan Magistrate issued process against the applicant/accused No.3 for commission of offence punishable under Sec.138 r/w Sec.141 of the Negotiable Instruments Act is correct, legal, and proper ?	:	In the negative.
2.	What order?	:	Revision Application is allowed.

REASONS

Point No.1:-

10. I have gone through the Revision Application, copy of complaint under Sec.138 of N. I. Act filed before the Ld. Metropolitan Magistrate, impugned order and documents on record. The Ld. Metropolitan Magistrate by impugned order issued process against the accused including the accused No.3 for the commission of the offence under Sec.138 r/w Sec.141 of the N. I. Act. The

accused No.3 has placed on record certified copy of Form No.DIR-12 issued by the Registrar of the Companies which prima facie shows that the applicant/accused No.3 is not associated with the accused No.1 Company as Director w.e.f. 25.04.2016. The cheques in question came to be issued on 01.01.2019. From the perusal of Form No.DIR-12, it is evident that accused No.3 has tendered his resignation as Director of the accused No.1 Company and he is not associated with the company from 25.04.2016. Admittedly, the alleged offence occurred after the resignation of the accused No.3 as the Director of the accused No.1 Company. In this context, it is necessary to extract here Sec.141 of N. I. Act which reads as under:-

141. Offences by Companies -(1) If the person committing an offence under Sec.138 is a Company, every person who at the time of 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 the punishment accordingly.

11. From the plain reading of the aforesaid provision, it is very clear that every person at the time of offence was committed, was incharge and was responsible shall be deemed to be guilty of the offence under Sec.138 of N. I. Act. In the case at hand, there is nothing on record to indicate that at the time of commission of the offence as alleged the present accused No.3 was incharge and was responsible to the accused No.1 company for the conduct of the business of the company. The Form No.-DIR 11 was not produced before the Ld. Metropolitan Magistrate by the complainant. If the said Form No.DIR-11 would have been produced before the Ld.

Metropolitan Magistrate, the Ld. Metropolitan Magistrate would not have passed the impugned order. However, the order came to be passed. In view of the provisions of Sec.141 of N. I. Act and as the accused No.3 was not incharge and was not responsible to the company for the conduct of the business of the company, he cannot be prosecuted for the offence punishable under sec.138 r/w Sec.141 of the NI Act. In view of the provisions of law extracted here-in-above, the impugned order passed by the Ld. Metropolitan Magistrate is not legal, proper and correct. I, therefore, answer point No.1 in the negative.

Point No.2:-

12. In view of my negative finding to point No.1, the impugned order passed by the Ld. Metropolitan Magistrate requires to be quashed and set aside to the extent of accused No.3.

In the result, following order is passed.

ORDER

- 1) Revision application No.226 of 2019 is allowed.
- 2) The impugned order passed by the Ld. Metropolitan Magistrate in C.C.No.598/SS/2019 is quashed and set aside to the extent of applicant/original accused No.3 Chandulal Jain and complaint to proceed against rest of the accused.
- 3) Revision Application No.226 of 2019 is accordingly disposed of.

- 4) Inform the Ld. Metropolitan Magistrate accordingly.

Dt.28.04.2023

(S. N. SALVE)
Addl. Sessions Judge,
City Civil & Sessions Court,
Borivali Division, Dindoshi, Mumbai

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER.”

UPLOAD DATE 29.04.2023
AND TIME : 11.10 a.m.

Mrs. T. S. Bhogte
NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Shri S. N. Salve (Court Room No.15)
Date of Pronouncement of Judgment/Order	28.04.2023
Judgment/Order signed by P.O. on	29.04.2023
Judgment/Order uploaded on	29.04.2023