IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1564 OF 2022

Drive India Enterprise Solutions Ltd
through its Authorized Representative Rajnish Dugar ...Petitioner

Versus

The State of Maharashtra & Ors ...Respondents

Mr. Jitendra Choudhary a/w Sunil D. Mishra, Advocate, for Petitioner.
Ms. M.R. Tidke, APP, for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 8th AUGUST 2023

PC :

1. The Petitioner is the original Complainant in C.C. No.7265/SS/2017 before the Metropolitan Magistrate 48th Court at Andheri, Mumbai. The complaint is filed under Section 138 r/w 141 of the Negotiable Instruments Act, 1881 (for short "N.I. Act"). At the first instance, the learned Magistrate vide his order dated 8th November 2017 issued process against all the Accused Nos. 1 to 11, including the present Respondent Nos.2, 3 and 4, under Section 138 r/w 141 of the N.I. Act.

2. The Accused Nos.9, 10 and 11 i.e., the Respondent Nos.2, 3 and 4 in this Petition, preferred Criminal Revision Application No.88 of 2018 before the Court of Sessions at Dindoshi, Mumbai. The Revision Application was allowed by the Additional Sessions Judge Borivali Division, Dindoshi, Mumbai vide his order dated 28th June 2019 whereby the process issued against the Respondent Nos.2, 3 and 4, was set aside. The Petitioner has challenged the said order.

3. Learned Counsel for the Petitioner invited my attention to the complaint. It is mentioned in the complaint that the Accused Nos. 10 and 11 were the Chief Executive Officer and Chief Financial Officer respectively (described as CEO and CFO in the complaint). He fairly submitted that there is a typographical error in the complaint wherein the Accused No.9 was described as a signatory of the cheques in question but he was not the signatory. However, further averments mentioned that the Accused Nos.2 to 11 were handling and were in charge of the affairs of the company; being in active participation in management of the company and as such were responsible for the day to day business,

activities, and / or the functioning and operation of the Accused No.1 company. The complaint further mentions that the Accused Nos.2 to 11 were personally interacting, discussing, negotiating and dealing with the complainant in respect of the transaction in question and are as such liable for the present offence under Section 141 of the N.I. Act.

4. Learned Counsel for the Petitioner submitted that the Additional Sessions Judge erred in observing that, since it was not the contention that the Accused Nos.9 to 11 were directors of the company, and therefore it meant that they could not be prosecuted. According to the learned Counsel subsection (1) and subsection (2) of Section 141 of N.I. Act are clear. All the officers and any other person who is covered under those section, can be prosecuted in such cases. The avermaents in the complaint squarely covers the Respondent Nos.2, 3 and 4's case as the Accused in the complaint and, therefore, they are liable to be prosecuted.

5. Considering these submissions, it is necessary to consider

the submissions of these Respondents.

6. Hence, the following order:

<u>O R D E R</u>

i) Issue notice to the Respondent Nos.2, 3 and 4, returnable on 30th October 2023.

ii) Stand over to 30th October 2023.

(SARANG V. KOTWAL, J.)