

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.140 OF 2020

**VIJAYSINGH SHANKARRAO MOHITE
PATIL AND ANOTHER**

)...APPLICANTS.

V/s.

**VITTHAL SAHAKARI SAKHAR
KARKHANA LIMITED AND ANOTHER**

)...RESPONDENTS

Mr.Abhijit Kulkarni, Advocate i/b D.D. & Abhijit Associates
for the Applicants.

Mr.R.M.Pethe, APP for the Respondent no.2-State.

CORAM : A. M. BADAR, J.

DATE : 25TH FEBRUARY 2020

P.C. :

1. Heard the learned counsel appearing for the applicants/original accused Nos.3 and 4 in summary criminal case No.1049/2016 pending on the file of the learned Judicial Magistrate First Class, Pandharpur.

2. A private criminal complaint came to be filed against the accused persons by respondent no.1-Vitthal Sahakari Sakhar Karkhana Limited. Prima facie it appears that the accused No.1 is arraigned with wrong nomenclature in the said complaint. The complaint is based on an Agreement executed between the complainant and Shivratna Udyog Limited, Ratnapuri, Karkamb, Taluka-Pandharpur, District-Solapur. Instead of joining Shivratna Udyog Limited, which is a limited Company registered under the Companies Act, 'Vijay Sugar' is arraigned as accused no.1 stating it to be a Company. According to the learned counsel for the applicants, it is a Unit of the company named Shivratna Udyog Limited.

4. Learned counsel for the applicants/accused nos.3 and 4 drew my attention to paragraph nos.2, 5 and 6 of the complaint and submitted that the applicants are arraigned as accused persons on assumption that they are the Directors of

accused No.1 Vijay Sugar Limited. The complaint averred that 4 cheques dated 20.5.2016 came to be issued by accused No.1 Company and those cheques were returned on 26.5.2016 on their dishonour by the bank.

5. Learned counsel for the applicants points out condition no.5 of the Agreement dated 26.2.2015 entered into between the complainant and Shivratna Udyog Limited which is in fact pleaded in paragraph no.2 of the complaint and submits that the cheques which are alleged to be dishonoured were in fact, 4 blank cheques which were handed over towards the security to the complainant. Hence, in submission of the learned counsel for the applicants, as the cheques were deposited towards the security, no offence punishable under Section 138 of the Negotiable Instruments Act is reflected from the complaint.

6. It is further submitted that applicant no.1/original

accused no.3 had resigned from Shivratna Udyog Limited on 06.02.2014, after complying all necessary formalities of tendering his resignation to the Board of Directors and the Board of Directors have also accepted the same and communicated it to the Registrar of the Companies. In a similar way, according to the learned counsel for the applicants, applicant no.2/original accused no.4 had tendered her resignation from Shivratna Udyog Limited on 10.5.2016 and all necessary procedure came to be followed for giving effect to the said resignation. My attention is drawn to Form 32 issued by the Registrar of Companies showing that applicant No.1/accused no.3 seized to be the Director of the Shivratna Udyog Limited w.e.f. 6.2.2014. Form DIR-12 which is a similar form which is being used after enactment of the Companies Act, 2013 is also pointed out to me to demonstrate that applicant no.2/original accused no.4 seized to be associated with the Shivratna Udyog Limited w.e.f.10.5.2016.

7. Prima facie in view of the resignation of applicants from the Company w.e.f. 06.02.2014 and 10.5.2016 they can not be made made liable for the offence of dishonour of cheque allegedly committed on 26.5.2016.

8. In this view of the matter, the following order.

ORDER

- i) Issue notice to the respondents returnable on 30th April 2020.
- ii) Learned Additional Public Prosecutor waives notice for the respondent No.2/State.
- iii) In the meanwhile, interim relief in terms of prayer clause (d) qua the present petitioners.

(A. M. BADAR, J.)