

**IN THE COURT OF SESSIONS AT GR. MUMBAI
CRIMINAL REVISION APPLICATION NO.1088 OF 2011**

Mr.Hanumant Vasant Bhosale .. Applicant

Versus

1. Ambuja Cements Limited
2. Mr.Satish Kalappa Patil
3. Mrs.Sheila Satish Patil
4. State of Maharashtra .. Respondents

**CORAM : H.H.THE ADDL.SESSIONS JUDGE
SHRI PR.DESHMUKH (C.R.NO.53)
DATED : 19/04/2012**

Appearance:

Advocate Mr.Rohit Gangawane for Applicant.
Adv.Mr.Modi for Respondent No.1.
Adv.Ms.Ranjana Shetty for Respondent Nos.2 and 3.

ORAL ORDER :-

1. Being aggrieved by order of issue summons in C.C. No. 326/Misc./2009 dated 14/12/2010 passed by 22nd Metropolitan Magistrate Court, Andheri, applicant who is accused No.2 in the complaint has preferred this revision.
2. Respondent No.1 company has filed complaint against present applicant and other two partners of M/s.A.B. Enterprises for offences under Sections 120-B r/w. 420 of the Indian Penal Code on allegations that present applicant and other two partners cheated the complainant company in respect of purchase order of D.G. Set dated 18/04/2007. Correspondence took place in between complainant and accused time to time from 18/04/2007 till issuance of cheque

dated 28/05/2009 which was dishonoured on 04/06/2009. Cheque was of Rs.95,00,000/- and according to the complainant, transaction was of total amount of Rs.1,13,00,000/- by applicant and other partners.

3. While challenging the impugned order of issuance of summons it is say of the applicant that basic ingredients of Section 420 are not attracted. Mandate given under Section 202 of the Code of Criminal Procedure before issuance of summons is not followed. The present applicant was not partner of the partnership firm when alleged transaction and ultimately, offence of cheating took place as he was retired from the firm on 06/01/2006. Ultimately, he prayed for recalling of order of issue summons and quashing proceeding against him.

4. Heard Learned Advocate appeared on behalf of the applicant and also Learned Advocate for the respondent. Gone through material placed on record including agreement of partnership, reconstitution deed of partnership (retirement deed) and extract of register of firm dated 17/11/2009.

5. On above facts following point arise for determination :-

POINTS

(i) Whether the impugned order of issuing summons to the applicant in C.C. No. 326/Misc./2009 dated 14/12/2010 is legal, proper and correct ?

FINDINGS

(i) No.

REASONS

6. The main ground of challenge is that of retirement of applicant from partnership firm with whom, there was dealing and correspondence in respect of purchase of D.G. Set by complainant company. And therefore Learned Advocate for the applicant relied on Harshendra Kumar D. V/s. Rebatilata Koley and ors.(2011) 3 Supreme Court Cases 351 wherein, it is observed by Their Lordship of Supreme Court that on the date when offence was committed by company, appellant was neither director of company not had anything to do with affairs of company. It is also further held that if such criminal complaint is allowed to proceed against ex-director, it would result in gross injustice and tantamount to abuse of process of the Court. Other citations relied by Learned Advocate for the applicant Anita Malhotra V/s. Apparel Export Promotion Council and anr. (2012) 1 Supreme Court Cases 520 wherein, criminal proceedings for dishonour of cheque against non-executive ex-Director who had resigned from company six years back was filed. It was held by Their Lordship of Hon'ble Supreme Court that certified copy of annual return which was public document coupled with simple copy of form No.32 should have been accepted as proof of appellant resignation and proceedings against her must have been quashed.

7. While applying observations made by Their Lordship in aforesaid two citations to the facts of the case in hand, it is seen that as per partnership agreement, present applicant became partner of the firm on 16/12/2003. As per reconstitution of deed of partnership

dated 06/01/2006, he resigned from partnership and from that day, affairs and business of partnership firm looked after by accused Nos.1 and 3, other partners who are arrayed in the complaint. There is reference of reconstitution of deed of partnership dated 06/01/2006 in subsequently prepared retirement deed of present applicant dated 28/08/2009 in between present applicant and other partners who are husband and wife. The extract copy of register of firm filed on record dated 27/11/2009 shows that accused No.3 who is wife of accused No.1 after retirement of present applicant in the year 2006 added as a partner in the firm. While appreciating all such documents placed on record by applicant with reference to date of purchase order of D.G. Set in between the complainant and partners of the firm which is dated 18/04/2007, goes to show that when transaction of purchase of D.G. Set took place in between the complainant and partner of the firm, present applicant was retired from partnership. Meaning thereby, when transaction took place and subsequent correspondence between the complainant and partnership firm took place, applicant was not partner of registered partnership firm of accused.

8. Other documents on the basis of which complaint of cheating is filed against present applicant is notice (Exh-C) dated 21/12/2008 issued by advocate for the complainant and reply given to notice on behalf of other two accused Mr. and Mrs.Satish Patil dated 08/01/2009, clearly goes to show that no notice was issued by complainant company to present applicant as partner of partnership firm. Second notice issued on behalf of complainant dated

12/06/2009 also shows that said notice was issued to only existing partner of the firm viz. Mr. and Mrs. Satish Patil. Meaning thereby, before filing of the complaint, complainant themselves were fully aware that present applicant had no role in alleged transaction of D.G. Set.

9. Now in such background citations relied by Learned Advocate for the respondent who supported the impugned order needs to be seen. Decision given by Hon'ble Supreme Court in **Rallis India Limited V/s. Poduru Vidya Bhusan and ors. (2011) 13 Supreme Court Cases 88** is on the point of sufficient averments in the complaint against respondent that they were partners of the firm and if accused wants to deny as partner of the firm burden of proof is on such partner and onus is required to be discharged by such partner by leading evidence. While appreciating facts in the present case as discussed in above paras while considering citations relied by the side of applicant, it is already observed that applicant had already resigned from partnership before entering into transaction of purchase of D.G. Set and intention of not serving notice before filing of the complaint on present applicant by complainant respondent clearly goes to show that he was also aware of resignation of applicant from accused firm. Other citations relied by respondent **State of Orissa V/s. Debendra Nath Padhi IV(2004) CCR 343 (SC)** and **Rukmini Narvekar V/s. Vijaya Satardekar and others (2009)1 Supreme Court Cases (Cri) 721** are on the point of scope for accused to produce any evidence in support of submissions made on his behalf at the stage of framing charge under Section 227 of the

Code of Criminal Procedure and section 91 of the Code of Criminal Procedure that of production of documents at the stage of framing of charge. Such is not stage in the present case. Therefore, observations made in the aforesaid two citations are not applicable to the facts of present case. Learned Advocate for the Respondent also relied on **Shri Bansilal S. Kabra V/s. Global Trade Finance Ltd. and Anr. 2010 ALL MR (Cri) 3168** wherein it is observed by Hon'ble High Court that in each and every case, after recording the statement of the complainant and his witnesses Magistrate should not postpone the issuance of process and again hold a fresh enquiry by asking the complainant to adduce further evidence. It is also held by Hon'ble Lordship that in such cases scope of enquiry under Section 202(1) Cr.P.C. is very limited one and same is directory and not mandatory.

10. In view of discussion made in above paras of the judgement while testing legality, propriety and correctness of the impugned order it has to say that present applicant who is arrayed as a partner alongwith other two partners of M/s.A.B. Enterprises, had already retired from partnership firm when transaction of purchase of D.G. Set took place in between accused Nos.1 and 3 and complainant. So also as notices were issued by complainant to accused Nos.1 and 3 other partners and not issuing notice to present applicant as partner of the firm clearly goes to show that retirement of present applicant from partnership firm was known to the complainant respondent. Even then respondent added present applicant as partner of the firm whose business was being run by husband and wife accused Nos.1 and 3 at the relevant time and therefore, in such circumstances case

relied by the side of the applicant **Harshendra Kumar D. V/s. Rebatilata Koley (Supra)** is totally applicable to the facts of present case. Therefore, I hold that on the date when alleged offence was committed by partnership firm of accused Nos.1 and 3, present applicant was neither partner of the partnership firm nor he had anything to do with affairs of partnership firm and if such criminal complaint is allowed to proceed against present applicant, it would result in gross injustice and tantamount to abuse process of law. Therefore, so far as order of issuance of summons/process against present applicant, it needs to be quashed and set aside. Hence, by giving findings to the point in the negative, following order is passed :-

ORDER

- (i) Criminal Revision Application No.1088 of 2011 is allowed.
- (ii) Order of issuance of process/summons against applicant in C.C.No.326/Misc./2009 under Section 420 r/w. 34 of the Indian Penal Code dated 14/12/2010 is quashed and set aside.
- (iii) Trial Court to proceed so far as trial of other accused is concerned.

Date : 19/04/2012

**(PR. DESHMUKH)
ADDL.SESIONS JUDGE
GREATER MUMBAI.**

**Dictated on : 19/04/2012.
Transcribed on : 19/04/2012.
Signed by HHJ on : 19/04/2012.**