

Revision -
Presented on : 28-12-2012
Decided on : 25-09-2013
Duration : 00Y 08M 27D

Exhibit No. 15

In the Court of Sessions Judge, Wardha **(Presided over by Ms. Vibha V. Kankanwadi)**

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Criminal Revision No. 134 of 2012

Sanjay Hariram Agrawal,
age – adult, Director, Home Trade Ltd.,
Tower No.4, 5th Floor, Wasi Rly.Station
Complex, New Mumbai-400 705
at present District Jail, Wardha
(Ori.Acc. No.1).

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Revisionist

Versus

Wardha District Central Cooperative
Bank Ltd., Wardha through its
General Manager, Opp. Rly.Station,
Wardha, Tah. and Distt. - Wardha
(Ori.Compltt.).

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Respondent

Criminal Revision u/sec. 397 r/w sec. 399, Cr.P.C.

Shri A. M. Deshmukh, Adv. for the Revisionist.
Shri R. M. Guru, Adv. for the Respondent

Oral Judgment **(Delivered on this 25th September, 2013)**

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1. Present revision has been filed by the original accused challenging the order passed below Ex.108 in SCC No.3380/2002 by JMFC (2nd Court), Wardha on 24.12.2012 whereby the application for substituting names of Directors of accused-

company as mentioned in the original complaint as accused persons came to be rejected.

2. Factual matrix leading to the revision are that original complainant filed a complaint u/sec. 138 of Negotiable Instruments Act against present revisionist and others. It was the complainant's story that the complainant is a Co-operative bank registered under the provisions of Maharashtra Cooperative Societies Act. It wanted to purchase GOI-2015-10.47 for Rs.25,22,00,000 carrying interest prescribed therein. The accused represented to complainant that they are Directors of the Home Trade Ltd. which was also a registered company and registered broker with Bombay Stock Exchange as well as National Stock Exchange. The accused represented to complainant that they would arrange for these securities being registered broker of SEBI. A proposal for purchase of securities was placed by Directors of the complainant Bank and it was approved. Thereafter as per instructions of the accused, complainant has made payment of the said amount by way of transfer on 16.3.2001 with Maharashtra State Cooperative Bank Ltd., Mumbai. Receipt about the payment was confirmed by letter of the same date. Thereafter the accused sent contract note to complainant for purchase of securities and confirmed by letter dt. 21.3.2001 that the complainant is the owner of said securities . It

was stated in the said letter that they will deliver securities to complainant immediately after the receipt thereof from RBI in physical form. However, even after reminders it was not sent. Thereafter on 4.9.2001 accused deposited the amount of Rs.1,28,12,500 towards interest by way of cheque with Maharashtra State Cooperative Bank where the complainant's is. The amount of interest was belatedly credited and as such there was loss of interest. Therefore, the complainant wrote a letter dt.17.9.2001 and called upon the accused to withdraw the entire investments they have made. However, there was no response from accused persons. In spite of reminders there was no response from them. The intention of accused were suspicious and therefore General Manager of the complainant-bank repeatedly met all the accused persons personally and asked them to refund the entire money. But, the accused by letter dt. 19.4.2002 informed that they are in the process of selling complainant's securities and would remit the entire proceeds to complainant within 15 days. When it was further insisted, two cheques were given by accused no. 1 for the company which were dt. 24.4.2002, one was for Rs.26,75,15,270 and another was for Rs.1,28,12,500. Both the cheques were deposited by the complainant with its banker but, they were dishonoured for want of fund. Therefore, legal notice dt. 24.4.2002 was issued to all the

accused. However, there was no response and, therefore, the complaint has been filed.

3. After verification, process came to be issued against accused persons. After accused no. 1 appeared, he has filed application Ex.108 contending that as per complaint the complainant intending to make allegations against all the accused including that of accused no. 1. It has been stated in the complaint that all the accused persons being Directors of the company were liable for the action under the provisions of Negotiable Instruments Act and therefore, the Court has issued process against all the accused. However, on 28.3.2012 the Court has passed order thereby deleting the names of all other accused persons except accused no. 1 from the complaint on the application moved by complainant. Say of the accused was not called and no opportunity of hearing was granted to him. Names of the accused persons came to be deleted thereby discharging them after issuance of process and therefore, said order was unsustainable. When all the accused persons were Board of Directors and stated to be equally liable, their names ought not to have been deleted. Deletion of names of certain accused persons cannot be at the sweet choice of the complainant and therefore accused no. 1 prayed that the trial be continued against other accused persons also whose names have been deleted by

order dt. 28.3.2012.

4. The application was resisted by the complainant by filing say that the names of all accused persons who have been deleted were not the necessary parties to the proceeding.

5. After hearing both sides, the learned Magistrate rejected the application holding that it has no power to review. This order is challenged in this revision.

6. Heard learned Adv. Shri A. M. Deshmukh for the revisionist and learned Adv. Shri R. M. Guru for the respondent. Perused record and proceeding.. Following point arises for determination. The finding and reasons for the same are as follows :

Points :

Whether the revisionist has shown that the impugned order suffers from illegality and interference is required at the hands of this Court ?

Findings :-

No.

Reasons

7. In order to cut short, I would like to say that both the parties have argued in support of their respective contentions. However, it was specifically asked to the learned advocate appearing for

revisionist under which provisions of law the said application Ex.108 was filed before the learned lower Court. It was also asked to the learned advocate for complainant as to under which provisions of law application for deleting names of accused persons after issuance of process was filed. Both of them could not point out any provision in Criminal Procedure Code to support their contentions. Even for the sake of argument if it is accepted that since there was no provision for deleting the names of accused persons after the process was issued and the learned Magistrate erred yet, it is to be noted that the said order which was passed below Ex.72 on 28.3.2012 is not the subject matter of the challenge in this revision. No doubt, a reference has been made and it is stated that both the orders i.e. order below Ex.72 and 108 are illegal yet, it is to be noted that the said order below Ex.72 came to be passed on 28.3.2012 and the application Ex.108 has been filed on 3.12.2012. By no stretch of imagination it can be said that the application was within limitation and, further more, the opportunity was available to accused no. 1 to challenge the said order before the revisional Court yet, he has not got it set aside. When the order below Ex.72 was passed on 28.3.2012 and the prevision revision has been filed on 28.12.2012, then the present revision cannot be said to be within limitation as regards challenge to the order below Ex.72 is concerned.

8. Now, as regards challenge to the order below Ex.108 is concerned, as aforesaid, the learned advocate for revisionist has not pointed out any specific provision under which the said application was made by the accused. Further it is surprising to note that how accused can ask the Court to continue the prosecution against other accused persons. In fact, whether other accused persons were really the necessary parties or being Managing Director or signatory to the cheque is only accused no.1 was liable was not at all within the scope of application Ex.108. Yet, it has been considered by the learned Magistrate. But, I need not have deliberation upon that point. When the predecessor of the learned Magistrate had passed order below Ex.72 was passed on 28.3.2012 and it was not challenged by accused no. 1, then the presiding officer or the learned Magistrate who dealt with application Ex.108 had no powers of review and therefore, could not have assessed the alleged illegality of passing order at Ex.72, and therefore, I do not find any illegality or error committed by the learned Magistrate in rejecting the application Ex.108. There is no merit in the present application. It deserves to be dismissed. Hence, I proceed to pass following order.

Order

- 1) The revision application no. 134/2012 is

dismissed.

2) The revisionist to pay cost of Rs.1000 to complainant-respondent.

Wardha
Dt.25-09-2013

(V. V. Kankanwadi)
Sessions Judge,
Wardha