Prakash Vs. Sarvesh and Others

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SooperKanoon Citation : sooperkanoon.com/1174308

Court : Mumbai Nagpur

Decided On : Jan-12-2015

Judge : S.B. Shukre

Appeal No. : Criminal Application (APL) No. 370 of 2014

Appellant : Prakash

Respondent : Sarvesh and Others

Judgement :

Oral Judgment:

1. Heard. Admit. Heard finally by consent.

2. By this application, the applicant has challenged the order passed on 03.2.2014 by District Judge-5 and A.S.J., Nagpur, dismissing the revision application being Cri. Revi. No. 127/13, filed by the applicant against dismissal of applicant's application seeking quashing of process issued against him by the Special Court on 18.10.2012.

3. According to the applicant, he is neither Director nor a signatory to the cheque issued in this case and there have been no specific averments made in the complaint that the applicant was responsible for the conduct of the affairs of the company or was in-charge of the company at the time of commission of the

offence. Therefore, it is submitted that no essential ingredients of fastening vicarious liability upon the applicant have been established and, as such, process could not have been issued. Reliance has been placed on the decision in **National Small Industries Corporation Ltd. v. Harmeet Singh Paintal and anr.** reported in **(2010) 3 SCC 330.**

4. Learned counsel for non-applicant no. 1 submits that the applicant has entered into contract with non-applicant no. 1 on behalf of non-applicant no. 2-company and at the time of execution of the contract he has represented himself as Director of the Company and even thereafter the applicant always engaged himself with non-applicant no. 1 in the capacity as Director of non-applicant no. 2-Company and, therefore, if this is the defence of the applicant that he was neither incharge of the Company nor responsible for the conduct of the business of the Company, it would be a question of acceptance of defence which can be appropriately decided when detailed evidence is available to the Court, and not at this stage.

5. On going through the documents filed along with the reply of respondent no. 1, especially the documents at Annexures A and B, about which there is no dispute raised by the applicant as well as remaining non-applicants, I find that there is a great substance in the argument of learned counsel for non-applicant no. 1. The documents at Annexures A and B, at this stage, do show that the applicant had represented himself to be the Director of non-applicant no. 2 Company and had created an impression by executing a contract on behalf of non-applicant no. 2 that he was duly authorised by non-applicant no.2-Company in making a deal between the Company and non-applicant no.1, and not only that, he has also disclosed his knowledge about the transactions that were to take place between non-applicant no.2 and non-applicant no. 1 on the basis of agreement dated 21.11.2009 vide Annexure-A. This agreement specifically refers to payment clause, according to which all payments were to be made through Account Payee cheques payable at Nagpur. This would be sufficient, at this stage, to hold that the applicant was responsible for conduct of the business of the Company at the time of commission of offence.

6. In the case of National Small Industries, supra, it has been held that there has to be specific averment in the complaint that the Director or Agent or Officer of the Company was responsible for conduct of business of the Company at the time of commission of the offence. In the instant case, there is averment in the complaint that applicant is Director of the Company and the material on record shows that the applicant was responsible for conduct of business of the Company at the time of commission of the offence in the capacity of Director of the Company, which capacity he himself made known to non-applicant no.1 by making specific representations in this regard. Therefore, I do not think that the said case National Small Industries would be of any assistance to the applicant at this stage.

7. The cheque in question was issued on 31.5.2012 at which time, according to learned counsel for the applicant, the applicant was not the Director of the Company. The applicant submits that he was actually Engineering Consultant for non-applicant no. 2 and from that post also he had resigned before May, 2012. It must be noted at this juncture that while giving reply to the notice issued to him regarding dishonour of cheques, the applicant has not given any explanation about his executing the contract dated 21.11.2009 in the capacity as Director of non-applicant no. 2 and in the reply the applicant has only stated that the disputed cheques did not bear his signature and that he was only Engineering Consultant for non-applicant no.2 Company. By not giving any explanation about his representing as Director of the Company, the applicant has allowed, at this stage, respondent no. 1 to believe that he is the person who is responsible for the conduct of affairs of the company. If the applicant submits that he was not so or was never to be so in the past, it will have to be decided by taking into consideration the evidence available on record.

8. In the circumstances, I find that the impugned order has been legally and correctly passed and there is no need for this Court to interfere with the same. The application deserves to be dismissed.

Accordingly, the application is dismissed.