

(2005) 04 BOM CK 0046

In the Bombay High Court

Case No : Criminal Application No. 1290 of 2005

Mansoor Ali Khan Pataudi

APPELLANT

Vs

Ram Niranjana Kedia Tours and Travels Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 15-04-2005

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2007) 1 BC 316

Hon'ble Judges : V.M. Kanade, J

Bench : Single Bench

Advocate : D.P. Adsule, app, Sanjog S. Parab, instructed by Mulla and Mulla and Craigie Blunt Caroe, for the Appellant; Rekha Tawade, instructed by M.V. Kini and Co., for the Respondent

Final Decision : Allowed

Judgement

V.M. Kanade, J.—Heard the learned Counsel for the petitioner and the learned Counsel for the respondent No. 1.

2. Petitioner is challenging the order of issuance of process passed by the Additional Chief Metropolitan Magistrate, 5th Court, Dadar, Mumbai in a complaint filed by respondent No. 1 u/s 138 of the Negotiable Instruments Act.

3. It is the contention of the learned Counsel appearing on behalf of the petitioner that the petitioner resigned from the company on 25.10.1996. His resignation was accepted on 12.5.1997 and an intimation was given to the Registrar of Companies and an entry in Form 32 was made on 31.8.2000. The cheque in question was issued by the company on 6.12.2002 and, subsequently, after dishonour of the cheque, demand notice was issued on 16.1.2003. It is submitted that immediately the petitioner sent a reply to the demand notice informing the complainant and their Counsel by letter dated 28.1.2003 that he has resigned as a director of M/s. Intel Travels Pvt. Ltd on 25.10.1996. It is submitted that in spite of this, a complaint had been filed. Petitioner has annexed

a certified copy of Form 32 which clearly indicates that the petitioner has resigned on 12.5.1997 when his resignation was accepted by the company.

4. The learned Counsel appearing for the respondent No. 1 submits that they were not aware about the resignation of the petitioner from M/s. Intel Travels Pvt. Ltd.

5. In my view, there is sufficient evidence to indicate that the petitioner had already resigned and was no longer a director of the company when the cheque in question was issued and, therefore, he cannot be made liable under the provisions of Section 138 of the Negotiable Instruments Act. Petition is therefore allowed. The complaint qua the petitioner is quashed. The process which is issued qua the petitioner is set aside. The Trial Court is directed to expedite the hearing of the criminal case qua the other accused decide it as expeditiously as possible within a period of six months.

6. All concerned to act on the copy of this order duly authenticated by the Registry.