Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that subsection.

(iv) Other officers of a company cannot be made liable under subsection (1) of Section 141. Other officers of a company can be made liable only under subsection (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.

18. In the present case, as already observed the petitioners were directors on the date of commission of alleged offence and were responsible for the business of the said company as averred in the complaint. The petitioners have not brought on record unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the petitioners could not have been concerned with the issuance of cheques and asking them to stand the trial would be abuse of process of Court. Therefore, prayer of the petitioners to cause interference in the impugned order deserves no consideration. The writ petition is devoid of any merits and stands rejected accordingly. Rule stands discharged.

***Result*:-** Petitions rejected.

ABC 2019 (II) 293 BOM
ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(S. S. Shinde, J.)
Criminal Writ Petition No 1062 of 2019
Decided on 11 July, 2019

MR. AKHILESH S/o. SURYABALI SINGH - Petitioner(s).

Versus

MR.HARIKESH S/o. CHANDRABALI SINGH & ANR.- Respondent(s).

Law Covered*:-** ***(A) Negotiable Instruments Act, 1881 — Section 138 — Code of Criminal Procedure, 1973 — Section 91 — Cheque in question in the custody of IO in a case under IPC — request for production before court in case under NI Act — Direction by trial Court to produce the cheque & bank memo for the purpose of

evidence & on verifying the same and by obtaining photocopy return to the IO — Upheld — petition dismissed. (Para 16)

(B) Code of Criminal Procedure, 1973 — Section 91 — Summons to produce document or other thing — Scope — Sec. 91(1) provides that — whenever any Court or any officer in charge of a police station — considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under CrPC — by or before such Court or officer— such Court may issue a summons, or such officer a written order— to the person in whose possession or power such document or thing is believed to be— requiring him to attend & produce it, or to produce it, at the time & place stated in the summons or order— In a pending proceeding, JMFC can direct production of document for inquiry/trial at any stage— Even the Police Officer can invoke Section 91, if it is necessary for production of document at any stage. (Para 12)

(C) Code of Criminal Procedure, 1973 — Section 91 — Summons to produce document or other thing — Limitation — Before taking cognizance, accused cannot be directed to produce the documents. (Para 15)

***Held*:-** Section 91 (1) provides that whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order. In a pending proceeding, JMFC can direct production of document for inquiry/trial at any stage. Even the Police Officer can invoke Section 91, if it is necessary for production of document at any stage. (Para-12)

In the present case the application under Section 91 of Cr.P.C. for production of documents has been filed by Respondent No.1, who is not the accused and the said documents are seized during the investigation of another crime and are in the custody of Investigating Officer. (Para-15)

There are concurrent findings recorded by both the Courts below as regards production of the documents. No fault can be found

with the findings recorded by the Courts below. There is no perversity, illegality and infirmity in the orders passed by the Courts below. There is no warrant to interfere with the concurrent findings recorded by the Courts below. As directed by the learned Metropolitan Magistrate, in case the cheque is already not produced, the concerned Investigating Officer to produce the subject cheque and bank memos before the concerned Metropolitan Magistrate who, on verifying the same and obtaining photocopy of the same, return the said cheque and bank memo to the concerned Investigating Officer within two weeks from its production. The Writ Petition is accordingly dismissed. Rule discharged. It is made clear that the observations made herein before are confined to the adjudication of the present Petition only. (Para-16)

Counsel:- ***For Applicant(s):*** *Mr. Rajesh Singh, Ms. Priti R Mahajan, Mr. Rahul Singh, Mr. Amit Jalgaonakar, Advs.*
For Respondent(s): *Mr. Kalpnath H Giri, Ms. Geeta Tripathi, Ms. Dhinika Shah, Mr. N B Patil, Advs.*

Cases Referred:-

Dhulipalla Veeraiah Choudary v/s. Kurra Veeraiah and another, 1988 Cri.L.J.274, (Para-15)

JUDGMENT

S. S. SHINDE, J.: - 1. Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2. The above Writ Petition takes exception to the order dated 16/01/2019 passed by the learned Additional Sessions Judge, City Civil & sessions Court, Greater Bombay by which order Criminal Revision Application No.320 of 2018 filed by the Petitioner - Original Accused came to be rejected and resultantly the order dated 16/01/2018 passed by the learned Metropolitan Magistrate, 58th Court, Bandra, Mumbai in C.C. No.1637/SS/2012 allowing the application filed by Respondent No.2 - original Complainant under Section 91 of the Criminal Procedure Code came to be confirmed.

3. The facts leading to filing of the present Writ Petition can in brief be stated thus :-

The Petitioner has lodged complaint being C R No.191 of 2011 against his uncle Chandrabali B Singh, Harikesh C Singh, who is Respondent No.1 herein, and one Naeem Ansari for the offences under Sections 420, 467, 468, 471 r/w 34 of the Indian Penal Code at

Kherwadi Police Station alleging that after the demise of Petitioner's father, the aforesaid persons have forged some stamp papers forging his signature and the signature of his mother and got the electric connection of Reliance Company in their name. They were arrested in the said crime. Later on the brother of Chandrabali namely Suryamani B Singh was also arrested. During investigation it was revealed that the said Naeem Ansari has no role in the said crime. However, the police have recorded the statement of said Naeem Ansari in which he has stated that during custody Respondent No.1 herein Harikesh informed him that he has stolen one signed blank cheque of the Petitioner herein. On such disclosure, second FIR has been lodged by the Petitioner herein for stealing his signed blank cheque at Kherwadi Police Station vide MECR No.2 of 2013. It is the case of the Petitioner that in order to take revenge, Respondent No.1 - Harikesh, who is his cousin, has presented his blank signed cheque for encashment, however, the said cheque was dishonoured. Therefore Respondent No.1 filed a complaint under Section 138 of the Negotiable Instruments Act against the Petitioner. It is the allegation of the Petitioner that the said cheque is stolen and thereafter amount has been mentioned therein, and the said cheque being returned unpaid, that a false complaint under Section 138 of the Negotiable Instruments Act has been filed against him. Whereas it is the case of Respondent No.1 - Complainant that the said cheque has been issued by the Petitioner towards discharging his liability and, on its dishonour he has filed the said complaint.

4. It is an undisputed fact that during the course of investigation the said cheque has been taken into charge by the Investigating Officer in the said MECR No.2 of 2013. Thereafter, it is in the complaint filed Respondent No.1 under Section 138 of the Negotiable Instruments Act against the Petitioner herein, that Respondent No.1 filed an application under Section 91 of the Criminal Procedure Code in C.C. No.1637/SS/2012 before the learned Metropolitan Magistrate, 58th Court at Bandra, Mumbai for production of the said cheque.

5. It is stated by Respondent No.1 in the said application under Section 91 of the Criminal Procedure Code that the said cheque presently is in the custody of Investigating Officer in Kherwadi MECR No.2 of 2013, and production of the said cheque is necessary and desirable for the purpose of inquiry/trial of the said CC No.1637/SS/2012. He therefore prayed to issue summons or order to

the IO in Kherwadi Police Station MECR No.2/2013 to produce the cheque in question for the purpose of inquiry/trial.

6. The said application under Section 91 of the Cr.PC. was opposed by the Petitioner herein by filing affidavit in reply. It is stated in the said affidavit that Respondent No.1 has malafidely lodged the complaint against the Petitioner with an intention to falsely implicate the Petitioner in the crime. It is stated that Respondent No.1 neither in the complaint nor in any of the application has disclosed that the disputed cheque is in the custody of the IO of Kherwadi Police Station, and if the present application is allowed, heavy loss and prejudice would be caused to the Petitioner which cannot be compensated in terms of money. The Petitioner therefore prayed for dismissal of the said application.

7. The learned Metropolitan Magistrate, 58th Court, Bandra, Mumbai after hearing the learned counsel for the parties and considering the material on record allowed the application under section 91 of the Cr.PC filed by Respondent No.1 - complainant. The learned Metropolitan Magistrate observed that if the investigating Officer is directed to produce the cheque and bank memo for the purpose of evidence and on verifying the same and by obtaining photocopy, and returning the same to document to the IO, would not cause prejudice to either of side. Accordingly the learned Metropolitan Magistrate by order dated 16/01/2018 allowed the said application and directed the IO to produce the aforesaid documents for limited purpose.

8. Being aggrieved by the order dated 16/01/2018 passed by the learned Metropolitan Magistrate, the Petitioner has preferred Revision Application No.320 of 2018 before the learned Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai. The learned Additional Sessions Judge, on going through the rival submissions of the learned counsel for the parties and the material on record came to a conclusion that the contentions of the parties required to be proved by way evidence and will be considered at appropriate stage. It is observed by the Additional Sessions Judge that allowing application for calling documents from the custody of IO would not amount to collecting the evidence for party, and the documents are material for inquiry of the case under Section 138 of the Negotiable Instruments Act. The learned Additional Sessions Judge did not deem it appropriate to interfere with the order passed

by the learned Metropolitan Magistrate and accordingly dismissed the Revision Application filed by the Petitioner herein by order dated 16/01/2019. It is the said order dated 16/01/2019 which is taken exception to by way of the above Writ Petition.

9. Heard the learned counsel for the parties. The learned counsel for the Petitioner submitted that the order directing the IO to produce the disputed cheque along with bank memo is contrary to the settled principles of law. It is contended that with a view to falsely implicate the Petitioner, that Respondent No.1 has filed false complaint under Section 138 of the Negotiable Instruments Act. It is also contended that the cheque in question is stolen and after mentioning the amount therein the same has been presented and there is no liability on the petitioner to honour the said cheque. The learned counsel for the Petitioner further contended that directing the IO to produce the disputed documents is collecting evidence for Respondent No.1. He therefore payed that the impugned orders passed by both the Courts below may be quashed and set aside.

10. Per contra, the learned counsel for Respondent No.1 contended that Respondent No.1 was employed in the rationing shop of mother of the Petitioner and the cheque in issue has been issued by the Petitioner at the instance of his mother towards salary of 128 months, and on its dishonour that the complaint has been filed by Respondent No.1. It is contended that the subject cheque and the bank memo are very much relevant for the purpose of inquiry in the said complaint. The learned counsel for Respondent No.1 submitted that the documents in question are with the investigating officer which fact is admitted by the IO. He submitted that the orders passed by the Courts below are proper and, needs no interference at the hands of this Court. He therefore submitted that the Writ Petition may be dismissed.

11. I have heard the learned counsel for the parties. It is an undisputed fact that the Petitioner has filed two complaints against Respondent No.1 and, Respondent No.1 filed complaint under Section 138 of the Negotiable instruments Act against the Petitioner. It appears that the complaint under Section 138 of the Negotiable Instruments Act filed by Respondent No.1 against the Petitioner is at the stage of issuance of process. It is also an admitted fact that the cheque on the basis of which Respondent No.1 has lodged the complaint is in the custody of Investigating Officer of Kherwadi Police in another case filed by the Petitioner. It is required to be noted

that in the present case, to begin the inquiry in the complaint filed under Section 138 of the Negotiable Instruments Act, the cheque and the bank memo are the necessary and relevant documents. Respondent No.1 therefore filed the application under Section 91 of Cr. PC for production of the documents which are in custody of IO.

12. In the context of the facts of the present case, it would be apposite to read and construe the ingredients of Section 91 of the Cr.PC., which for the sake of ready reference reproduced herein under :-

"91. Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

Section 91 (1) provides that whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in

the summons or order. In a pending proceeding, JMFC can direct production of document for inquiry/trial at any stage. Even the Police Officer can invoke Section 91, if it is necessary for production of document at any stage.

13. In the present case, the cheque issued to Respondent No.1 when presented in bank was dishonoured and thereafter Respondent No.1 filed the complaint against the Petitioner. Therefore the subject cheque and bank memo, on the basis of which the complaint under Section 138 of the Negotiable Instruments Act has been lodged are necessary and relevant documents for the purpose of inquiry/trial. Admittedly the said documents are in the custody of the Investigating Officer in another case and, as rightly observed by the Sessions Court, calling the documents from the custody of Investigating Officer is not collecting the evidence for party.

14. The complaint filed by Respondent No.1 is at the stage of issuance of process and the cheque, which is directed to be produced is in the custody of the Investigating Officer in MECR No.2 of 2013 registered at Kherwadi Police Station, is relevant before taking cognizance of the said complaint, and also yet the investigating in the said crime is not complete. In my view, once that cheque is produced by the Investigating Officer, the same could be returned to the said Investigating Officer immediately within two weeks after verifying and obtaining the photocopy of the same. In my view, the learned Metropolitan Magistrate has rightly held that if the investigating officer is directed to produce the cheque, bank memo for the purpose of evidence, on verifying and obtaining photocopy, the same can be returned to the investigating officer and no prejudice would be caused to either side. The said order of the learned Metropolitan Magistrate has been confirmed by the learned Additional Sessions Judge in the Revision Application. The learned Additional Sessions Judge recorded the findings that those are material documents and it is very much necessary to call for both the documents for trial under Section 138 of the Negotiable Instruments Act.

15. Reliance sought to be placed by the learned counsel for the Petitioner on the judgment of Andhra Pradesh High Court reported in ***1988 Cri.L.J.274*** in the case of ***Dhulipalla Veeraiah Choudary v/s. Kurra Veeraiah and another*** is misplaced. In the said case the order that has been passed by the Magistrate invoking the provisions of Section 91 directing the accused to produce the vehicle which was incriminatory

in nature was not sustainable. The facts of the said case and the facts in the present case are different. Before taking cognizance, accused cannot be directed to produce the documents. In the present case the application under Section 91 of Cr.P.C. for production of documents has been filed by Respondent No.1, who is not the accused and the said documents are seized during the investigation of another crime and are in the custody of Investigating Officer.

16. There are concurrent findings recorded by both the Courts below as regards production of the documents. No fault can be found with the findings recorded by the Courts below. There is no perversity, illegality and infirmity in the orders passed by the Courts below. There is no warrant to interfere with the concurrent findings recorded by the Courts below. As directed by the learned Metropolitan Magistrate, in case the cheque is already not produced, the concerned Investigating Officer to produce the subject cheque and bank memos before the concerned Metropolitan Magistrate who, on verifying the same and obtaining photocopy of the same, return the said cheque and bank memo to the concerned Investigating Officer within two weeks from its production. The Writ Petition is accordingly dismissed. Rule discharged. It is made clear that the observations made herein before are confined to the adjudication of the present Petition only.

***Result*:-** Writ Petition dismissed.

ABC 2019 (II) 301 GUJ

ACQUITTAL & BAIL CASES

HIGH COURT OF GUJARAT

(V.P. Patel, J.)

R/Criminal Revision Application No. 466 of 2019

Decided on 1 May, 2019

TRIBHOVANBHAI HIRABHAI DHAMAL ***- Applicant(s).***

Versus

STATE OF GUJARAT ***- Respondent(s).***

Law Covered*:-** ***(A) Code of Criminal Procedure, 1973 — Sections 397 r/w 401 — Negotiable Instruments Act, 1881 — Sections 138 & 142 — Conviction by Court below — Matter amicably settled between parties — Nature of dispute — private nature — Held, further