

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 171 OF 2013

Vitthal S/o Laxman Tanpure
Age 39 years, Occ.Agr.
r/o Khasapuri, Tq. Paranda
Dist.Osmanabad

.. PETITIONER

Versus

1] State of Maharashtra
[Copy to be served on P.P.
High Court Bench at Aurangabad

2] Suresh Kumar Shedpure
Age 52 yrs. Occu.Service
R/o Administrative, Narsinh
Sahakari Sakhar Karkhana Ltd.
At present Special Auditor Office
Osmanabad.

3] The Narsinha Co.op. Sugar Factory
Indapur Tq. Washi, Dist.Solapur
(Deleted)

4] Suresh Ramdas Chavan
Managing Director
Narsinh Sahakari Sakhar Karkhana Ltd.
Age major Occu.Service
R/o Narsinh Sahakari Sakhar
Karkhana Ltd. Indapur
Tq. Washi, Dist.Osmanabad

.. RESPONDENTS

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Shri A.S.More, Advocate for petitioner
Shri D.V.Tele,APP for respondent State
Shri H.D.Deshmukh,Adv. for respondent no.2.

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CORAM : V.M.DESHPANDE,J.
DATED : 20TH JULY, 2015

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally with consent of parties.

2] Both these Writ Petitions are filed by original complainant Vitthal s/o Laxman Tanpure.

The non applicant nos.2 to 4 in these two writ petitions are accused nos.1, 2 and 3 in the original proceeding i.e. the complaint.

3] S.C.C.No.147/08 was filed in respect of Cheque No.SC/4-773710 and Writ Petition No.171/03 pertains to the said cheque.

Whereas Writ Petition No.166/13 pertains to Cheque No.SC/4-773695 and Criminal Case No.148/08.

4] An application below Exh.16 was moved in S.C.C.No.147/08 by accused no.2 who is the respondent no.2 in these proceedings, whereas, Exh.15 was moved in S.C.C.No.148/08 by original accused no.2. By moving this application, original accused no.2 submitted before the learned Magistrate that his name be deleted from the array of the accused and he be discharged. On 3/9/2010, the learned Magistrate rejected those two applications observing that there is no procedure for deleting the name of the original accused. Against these two orders passed on 3/9/10, two different revisions were preferred before the learned revisional Court vide Criminal Revision

Application Nos.121/10 and 120/10. Both these revisions were allowed on 22/10/12 by the learned Sessions Judge, Osmanabad and thereby discharged the respondent no.2.

5] The two different proceedings were initiated by present petitioner under the Negotiable Instruments Act against the respondents. After satisfying himself, the learned Magistrate issued order of process in both the criminal cases. It is not in dispute that the order passed by learned Magistrate in respect of issuance of process was not at all questioned before any superior Court.

In that background, when the applications Exh.16 and 15 for deleting the name of the accused no.2 was moved, in my view, the learned Magistrate was right in rejecting the application inasmuch as after issuance of process, the learned Magistrate has to decide the matter on its own merits in accordance with law.

6] Even before the revisional Court there was no prayer for setting aside the order passed by the learned Magistrate ordering issue of process inspite of that, the learned revisional Court decided the revision as if the learned revisional Court is deciding the issue of quashing of the process issued by learned Magistrate. In my view, such approach on the part of the learned revisional Court has clearly exceeded in its jurisdiction. It was not open for the learned revisional Court to decide the said issue without there being any prayer or without there being any proper representation in that behalf.

7] Since the order passed by the revisional Court clearly exceeds its jurisdiction and it was not open for the learned revisional Court to delete the name of the original accused no.2 without disturbing the order of issuance of process, these writ petitions are required to be

allowed. However, it is made clear that it will be open for the original accused no.2 to take appropriate proceedings for challenging issuance of process and if such proceedings are filed before Sessions Court alongwith application for condonation of delay, the same shall be decided by the learned Sessions Court in accordance with law. With these observations, I pass following order :

ORDER

A] Both Writ Petitions are allowed. The judgment and order passed by Sessions Judge, Osmanabad dated 22/10/2012 in Criminal Revision Nos.120/10 and 121/10 are hereby quashed and set aside. Rule made absolute.

(V.M.DESHPANDE,J.)

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