IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 470 OF 2015

Shri. Mohan Bandu Jadhav **....Petitioner.**

Versus

The State of Maharashtra & Anr. **....Respondents.**

Mr. D.K. Dagadkhair, Advocate for petitioner.
Mr. U.H. Bhogle, APP for State.
Mr. R.S. Deshmukh, Advocate for respondent No. 2.

CORAM : T.V. NALAWADE, J.
DATED : 29th June, 2015.

ORDER :

1. The petition is filed to challenge the order made by the learned Judicial Magistrate, First Class, Aurangabad on Exh. 54 in SCC No. 4789/2014. The application filed for reissue of summons to defence witnesses is rejected by the Court. Both the sides are heard.

2. It is a private complaint filed by respondent for offence punishable under section 138 of Negotiable Instruments Act. There is allegation that from the complainant, who is authorised dealer of tractors of DEUTZ FAHR company, the present petitioner/accused purchased a tractor and the value of

the tractor was Rs. 6,75,000/-. It is contended that the discount of Rs. 50,000/- was given and so, the amount of Rs. 6,25,000/- was to be given by the accused. The amount of Rs. 50,000/- was given by the accused in cash and in respect of amount of Rs. 5,75,000/-, accused had issued one post dated cheque in the name of Shri. Sai Venkateshwara Motors. It is contended that the said firm was a partnership firm and the authorised signatory of the complainant was of partner of the said firm at the relevant time, but the business of partnership came to be converted in to private limited company, in the complainant company. It is contended that the cheque bounced and after following the necessary procedure, the complaint was filed in respect of the aforesaid cheque amount.

3. The relevant record like certificate of incorporation of the company etc. invoice in the name of Shri. Sai Venkateshwara Motors is produced. The statutory notice was not replied by the accused. The recording of the evidence of the complainant's side is over and aforesaid record is proved.

4. The accused wants to show that he had paid the octroi of Rs. 1250/- to Aurangabad Corporation in respect of the said tractor, but he is having only zerox copy of the tax receipt.

He wants to prove the tax payment by examining Tax Officer of the Corporation. The learned J.M.F.C. has refused to grant this relief by observing that in the past summons was issued to this witness and it was given in the hand of the accused, but he did not produce report in respect of that summons.

5. The learned counsel for complainant, present respondent took this Court through the previous orders made by the learned J.M.F.C. It appears that in defence, the accused wanted to examine the Tax Officer and so, the application at Exh. 49 was given on 27.2.2015 and it was allowed. The accused requested for reissue of the summons to this witness and one witness from post office on 9.3.2015 and this application was also allowed and the summons to both the witnesses were given in the hand of the accused. It appears that as the report in respect of the summons, which was to be served on the Tax Officer through police, was not received, inquiry was made by the Court with the concerned police station. The police station informed that such summons was not received by it till 23.3.2015.

6. In the application at Exh. 56, the accused contended that there was inconsistency in the bill prepared by the

complainant if it was compared with the tax paid at the rate of 2.5% and so, he wanted to examine the officer from Corporation. On this application, the learned J.M.F.C. made order and mentioned that in the past, witness summons were given in hand of the accused and one witness like postman was examined, but no report or affidavit in respect of previous summons issued to Tax Officer was filed by the accused. On the application at Exh. 56, it is further observed that when inquiry was made with the learned counsel for the accused, he informed that the summons was handed over to police by him, but he refused to file affidavit in that regard. The Court observed that the accused was not examining the witness and he was also not closing the evidence and he was trying to protract the decision of the matter. The aforesaid circumstances like the report given by the police that no such summons was received is also mentioned in this order. When the Court refused to reissue the summons, another application at Exh. 57 was given by the accused and he requested for adjournment by informing that he had filed criminal writ petition before High Court. This application was filed on 6.4.2015. The writ petition came to be filed in this Court on 7.4.2015. A tendency is increasing to pressurize the Judges of the subordinate judiciary by mentioning that the party wants to challenge the order in High Court and after filing of the proceedings, submissions are made that the proceedings are pending in the High Court and the subordinate Court should not make progress in the matter pending before him. In the present matter, even when the proceeding was not filed before this Court submission was made on 6.4.2015. The stay is not granted by this Court in the present proceeding. Such tactics are played to pressurize the Judges of the subordinate judiciary and it is not proper on the part of the concerned. The Presiding Officer of the Trial Court are also not expected to stay the proceeding only because some proceeding of present nature is filed in the High Court. Unless there is specific order of stay from this Court, the trial Court should not stop the hearing of the case.

7. This Court was required to inform to the Court accordingly in order dated 13.4.2015 as the aforesaid circumstances were brought to the notice of this Court.

8. On merits also, it can be said that the evidence of the Tax Officer was not at all necessary. The payment of octroi tax is as per the Corporation Act and nobody could have disputed that such tax was really paid at the percent mentioned by the accused. This Court has no hesitation to observe that every attempt is made by the accused to protract the decision of

matter. No interference is possible in the order made by the learned J.M.F.C.

9. In the result, the petition stands dismissed.

[T.V. NALAWADE, J.]

ssc/