IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 551 OF 2014

Iqbal Abdul Karim Shaikh .. Petitioner
Age. 51 years, Occ. Business,
R/o. Ramchandra Towers, Basement of
Hotel Radhika, Newasa Road,
Shrirampur, Dist. Ahmednagar.

Versus

Subhash s/o. Dayanand Kasab .. Respondent
Age. 66 years, Occ. Pensioner,
R/o. Ainatpur, Post. Belapur,
Tq.Shrirampur, Dist. Ahmednagar.

Mr. N.R. Bhavar, Advocate for the petitioner.
Mr. R.R. Karpe, Advocate for sole respondent.

CORAM : SMT.SADHANA S. JADHAV,J.
DATED : 26.03.2015

ORAL JUDGMENT :-

1. Heard respective counsel. Rule. Rule made returnable forthwith with the consent of the parties.

2. The petitioner herein happens to be original accused in S.T.C. No. 291 of 2011 pending before the Judicial Magistrate, First Class, Shrirampur. The petitioner herein filed an application below Exh.19

challenging the very tenability of the complaint under Section 138 of Negotiable Instruments Act. The petitioner had contended that the disputed cheque was endorsed as not negotiable and therefore according to the accused the complaint under Section 138 of the Negotiable Instruments Act, would not be maintainable. The Learned Magistrate had considered the contentions raised by the respective parties and has referred to Section 124 of the Negotiable Instruments Act.

3. Sections 123 & 124 of the Negotiable Instruments Act read thus:

> “**123. Cheque crossed generally-** Where a cheque bears across its face an addition of the words “and company” or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words, “not negotiable”, that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.
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> **124. Cheque crossed specially-** Where a cheque bears across its face an addition of the name of a banker, either with or without the words “not negotiable”, that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker”

4. The clarification is further contemplated under Section 126 of the Negotiable Instruments Act which reads thus;

> **126. Payment of cheque crossed generally-** Where a cheque is crossed generally, the banker, on whom it is drawn shall not pay it otherwise than to a banker.

5. This would simply mean that even if the endorsement is stated to be not negotiable yet it would be an instrument covered under the Negotiable Instruments Act but would be drawn in favour of the person in whose favour it is drawn and shall not be transferable. Learned Court had considered the very definitions of the cheque under Sections 123, 124 and 126 of the Act.

6. Section 130 further clarifies that a person taking a cheque crossed generally or specially, bearing in either case the words “not negotiable” shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it.

7. In view of this, the very application was unwarranted and was rightly rejected by the Judicial Magistrate, First Class, Shrirampur, vide order dated 05.06.2013.

8. The petitioner herein being aggrieved by the said order filed revision application reiterating his contentions that the very fact that there is an endorsement on the cheque that the said cheque is not negotiable, the case under the provisions of Negotiable Instruments Act would not be maintainable. In the revision application the petitioner herein had filed an application seeking stay to the proceedings. By order dated 26.08.2013 the learned Revisional Court has rejected the application refusing to grant stay to the proceedings. The said order reads thus :-

> "Perused the application and written argument at Exh.6. I have gone through the application and order passed thereon i.e. Exh.19 and order dated 05.06.2013 there is no material satisfying this Court to stay the proceeding before trial Court hence, there is no fit case to grant stay from any angle. Hence, this application stands rejected."

9. In fact, upon consideration of the merits of the case the Sessions Court ought to have rejected the main revision application itself. However, at that stage only an interim application was considered and was rejected. Present petition is filed against the order refusing to grant stay.

10. After considering the provisions of the Negotiable Instruments Act, it is clear that the disputed cheque is a negotiable instrument and that the complaint under Section 138 of the Act was maintainable. It appears that the petitioner has only adopted means to protract the proceedings and delay the trial in S.T.C. No. 291 of 2011.

11. Hence, the writ petition being sans merits, deserves to be dismissed. The learned Revisional Court shall decide the revision application within two weeks from the date of receipt of this order and dispose of the Criminal Revision No.50 of 2013, in view of the observations made herein above in accordance with law. The writ petition being sans merits is rejected. Rule is discharged.

[SMT. SADHANA S. JADHAV,J.]

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