# IN THE HIGH COURT OF JUDICATURE AT BOMBAY, AURANGABAD BENCH, AT AURANGABAD.

## Criminal Application No. 2686 of 2014

Shivaji s/o. Pandharinath Chate,
Age : 65 years,
Occupation : Agriculture & Business,
R/o. Tambwa, Taluka : Kaij,
District : Beed. .. Applicant.

**versus**

Shri Vitthal Sai Co-operative
Sugar Factory Ltd., Murum,
Taluka : Umarga,
District : Osmanabad,
Through Chand Ibrahim Ausekar,
Age : 43 years,
Occupation : Service. .. Respondent.

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*Mr. V.M. Chate, Advocate, holding for*
*Ms. S.V. Chate (Kekan), Advocate, for the applicant.*

*Respondent served (Absent).*

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**CORAM : A.M. BADAR, J.**

**DATE : 3RD MARCH 2015**

**PER COURT :**

1. Leave to correct the title clause granted, at the request of the learned Counsel for the applicant.

2. Heard the learned Counsel for the applicant. Nobody for the respondent though served.

3. Perused the impugned order of issuance of process for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, passed on 3-8-2013, by the learned Judicial Magistrate (F.C.), Omerga.

4. The learned Counsel for the applicant / original accused has contended that the cheque, in question, was not in respect of legally enforceable debt. He further argued that the learned Judicial Magistrate (F.C.) has no territorial jurisdiction to entertain the complaint, in view of the judgment of the Hon'ble Apex Court, in the case of ***Dashrath Rupsingh Rathod Vs. State of Maharashtra & another***, reported in ***2014 (8) LJSOFT (S.C.) 1***.

5. Perusal of the complaint lodged by respondent - Shri Vitthal Sai Co-operative Sugar Factory Ltd., Murum, do shows that the cheque was issued for legally enforceable debt as the averments made therein are to the effect that the accused had taken away the advance and has failed to comply his obligations. The impugned order of the learned Judicial Magistrate (F.C.), Omerga, issuing process has dealt with this aspect by holding that the cheque in dispute was for legally enforceable debt of the complainant.

6. The learned Counsel appearing for the applicant / original

accused has contended that the learned Judicial Magistrate (F.C.) has no jurisdiction to entertain the complaint in view of the law laid down by the Hon'ble Apex Court, in the case of ***Dashrath Rupsingh Rathod Vs. State of Maharashtra & another (supra)***. It is well settled that the question of jurisdiction is mixed quesetion of law and fact. We do not find any averment to that effect in the Application under Section 482 of the Code of Criminal Procedure, 1973. The applicant / original accused can very well agitate this point before the learned trial court.

7. In this view of the matter, we do not find any infirmity in the impugned order passed by the learned Judicial Magistrate (F.C.), Omerga, warranting interference in extraordinary jurisdiction conferred under Section 482 of the Code of Criminal Procedure, 1973.

8. The Application is accordingly rejected.

**( A.M. BADAR )**
**JUDGE**

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