

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

CRIMINAL APPLICATION NO. 3010 OF 2013

Shambu Mahadeo Sugar and
Alied Industries Ltd., Havargaon,
Tq. Kallam, Dist. Osmanabad.
Through its authorized Signatory
Ashok Rambhau Thorbole,
Age 35 years, Occu. Service,
R/o as above.

...Applicant
(Ori. Complainant)

versus

Rajabhau Kacharu Bangar,
Age 48 years, Occ. Business,
r/o Jawarwadi, Post. Madalmohi,
Tq. Georai, Dist. Beed.

...Respondents
(Ori. Accused)

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Mr. A.B. Tele, Advocate for Applicant
Mr. R.G. Hange, Advocate for respondent

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CORAM : A.I.S. CHEEMA, J.

DATED : 2nd MARCH, 2015

Order :-

1. Heard learned counsel for applicant - original complainant and learned counsel for respondent - original accused. Perused the record.
2. The trial Court in the proceeding under Section 138 of the Negotiable Instruments Act referred to the provisions requiring that it should be cheque drawn by the accused on

the account maintained by him. The trial Court noticed that cheque concerned was from the account of one Mr. Bhausaheb. There is evidence of one Mr. Vaijnath Kale brought on record from the bank, which showed that account concerned was in the name of Mr. Bhausaheb Kacharu Bangar whereas present respondent – accused is Rajabhau Kacharu Bangar. In the evidence of witness for accused he stated that he was Bank Manager of the District Central Co-Operative Bank. He stated that Cheque book is not issued to illiterate persons.

3. Learned counsel for respondent - original accused submitted that the applicant – original complainant could at the most be proceeded for prosecution under section 420 of the Indian Penal Code but there was no case made out under Section 138 of the Negotiable Instruments Act.

4. Learned counsel for applicant – original complainant submits that only when the matter went to the Court under Section 138 of the Negotiable Instruments Act, it transpired that the cheque given by the accused was not of his own account.

5. Looking to the reasonings recorded by the trial court and above facts, in any case, the prosecution under section 138 of the Negotiable Instruments Act could not be maintainable. Acquittal in such proceedings does not call for any interference. It would be open for the applicant - original complainant to resort to appropriate remedy.

6. As such, there is no substance in the application. The criminal application stands rejected.

Sd/-

(A.I.S. CHEEMA, J.)

MTK