

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

CRIMINAL WRIT PETITION NO. 559 OF 2013

Ratanbai W/o Baburao Kakade

Age : 61 Yrs., Occ. : Household,

R/o : Mohaniraj Nagar,

Kopargaon, Tq. Kopargaon,

Dist. : Ahmednagar.

..... PETITIONER

V E R S U S

1. Satish S/o vBaburao Kakade

Age : 41 Yrs., Occ. Business,

R/o : Mohaniraj Nagar,

Kopargaon, Tq. vKopargaon,

Dist. : Ahmednagar.

[deleted as per Court order

dated 02/03/2015]

2. Sanjivani Sahakari Pat Sanstha

Maryadit, Kopargaon

Tq. Kopargaon, vDist. Ahmednagar

Through Babasaheb vS/o Parashram

Padekar, Age : 46 Yrs., Occ. Service,

R/o : Kopargaon, Dist. Ahmednagar.

..... RESPONDENT

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Mr. N.R.Bhavar, Advocate for Petitioner.

Mr. P.B.Shirsath, Advocate for R - 1.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 2nd MARCH, 2015

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ORAL JUDGMENT :

1. This Court on 08/12/2014 issued notice only to respondent No. 1/original complainant. In that view of the matter, the learned counsel for the petitioner submitted that he wish to delete respondent No. 1 from the array of the respondents. Permission granted.

2. Rule. Rule is made returnable forthwith. By consent of the parties, heard the learned counsel for the petitioner and the learned counsel for respondent No. 2 finally.

3. By the present Writ Petition, the petitioner is challenging the Order dated 28/01/2013 passed by the learned Judicial Magistrate First Class, Kopergaon below Exh.

20 in S.T.C. No. 421/2007. The said application was for discharge. It was rejected by the learned Magistrate.

4. There is no dispute that the cheque was not issued by the present petitioner, who is joined as accused No. 2 in the private complaint in the proceedings u/s 138 of the Negotiable Instruments Act, 1881. Admittedly, the present petitioner is not the drawer of the disputed cheque. According to the allegation made in the Complaint, the petitioner is the borrower and her son Satish, who was guarantor, has issued cheque. Prima facie, there is no material available on record to show that there is any relation between the complainant and the petitioner. This issue is not in res-integra in view of the decision of this Court reported in the case of Viral Filaments Ltd. Vs. State of Maharashtra and another, 2009 (6) Mh.L.J. 1018. In view of the fact that the present petitioner is not drawer of the cheque, the liability can not be fastened upon the present petitioner for the offence punishable u/s 138 of the Negotiable Instruments Act. In that view of the matter, the learned trial Court has committed mistake in rejecting the application.

5. Hence, the present Writ Petition is allowed. The Order dated 28/01/2013 passed by the learned Judicial Magistrate First Class, Kopargaon below Exh. 20 in S.T.C. No. 421/2007 is hereby set aside. The petitioner stands discharged from S.T.C. No. 421/2007.

6. At this stage, Mr. P.B.Shirsath, the learned counsel for respondent No. 2/original complainant submitted that the Complaint is of the year 2007, therefore, direction be issued to the Court below to decide the Complaint within stipulated period. Speedy justice is the right of every litigant. The prayer, therefore, can be accepted.

7. In view of the pendency of the proceedings since 2007, the trial Court is directed to decide the proceedings within one year from the receipt of this Order.

[V.M.DESHPANDE, J.]

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