

FARAD CONTINUATION SHEET NO.

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

CRIMINAL WRIT PETITION NO. 906 OF 2014**[Sachin s/o Suresh Jain vs The State of Mah. And anr.]**

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or
directions and
Registrar's orders

Court's or Judge's orders

Shri A.A.Nimbalkar, advocate for the petitioner
Shri S.A.Ambad, A.P.P. for respondent no.1
Shri P.R.Kadam, advocate h/f
Shri M.P.Tripathi, advocate for respondent no.2

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CORAM : V.M.DESHPANDE, J.

DATED : 8th January, 2015

PER COURT :-

1] Heard learned counsel for the petitioner, learned counsel for respondent no.2/original complainant and also the learned A.P.P. for the State.

2] Learned counsel for the petitioner submitted that the impugned order of issuance of process, if perused, clearly shows that it is the outcome of total non-application of mind on the part of the learned Magistrate.

3] He invited my attention to the copy of the complaint. The copy of the complaint is available at page 8 of the compilation. The proceedings are under Section 138 of the Negotiable Instruments Act. Perusal of page 8 of compilation shows the nomenclature of the complaint, which reads as under :-

“Complainant-Anil s/o Pannalal Dungarwal
Vs
Accused-Mr. Sachin s/o Suresh Jain”

4] The impugned order is dated 31.3.2011. The said order is available at page 9 of the compilation. By the impugned order, process is issued against the applicant for the offence punishable under Section 138 of the Negotiable Instruments Act.

5] Impugned order at page 9 reads as under :-

“Order passed below Exh.1
Aishvarya vs Chandrakant”

This order is signed by the learned Judicial Magistrate, First Class, Washi on 31.3.2011. The impugned order shows that it is passed in the matter of Aishvarya Vs Chandrakant; whereas the complaint was filed by Anil Dungarwal against Sachin Jain.

6] Learned Magistrate ought to have noted that by issuance of process he is setting criminal law into motion by directing the petitioner/accused to face a criminal prosecution. The order of issuance of process has its drastic effect. The learned Magistrate should apply the mind before issuing the order of process. Practice of issuance of order of process mechanically has to be deprecated. Perusal of the impugned order shows that it is the outcome of mechanical approach.

7] In that view of the matter, the order dated 31.3.2011 is hereby set aside. The matter is remanded back to the Judicial Magistrate, First Class, Washi, with a direction to the learned Magistrate to pass the necessary order in accordance with law.

8] With the above observations, the petition is disposed of. Needless to mention, this court has not considered the matter on its merits and the learned Magistrate shall pass the order in accordance with law.

[V.M.DESHPANDE, J.]

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