

FARAD CONTINUATION SHEET NO.

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

CRIMINAL WRIT PETITION NO. 1146 OF 2014**[Vijay s/o Chandraprakash Uplanchiwar vs Umesh Kulkarni 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.G.Kulkarni, advocate for the petitioner
Shri D.S.Bharuka, advocate for respondent no.1
Shri V.D.Godbharle, A.P.P. for respondent no.2

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CORAM : V.M.DESHPANDE, J.

DATED : 10th March, 2015

PER COURT :-

1] Rule. Rule is made returnable forthwith.
Heard finally with the consent of learned counsel for the parties.

2] The petition is by the original complainant, who has initiated proceedings for the offence punishable under Section 138 of the Negotiable Instruments Act.

3] An application (Exh.38) was moved by the complainant for initiating criminal action against the accused under Sections 195(B) and 340 of the Code

of Criminal Procedure and for sending the disputed cheque to the Hand Writing Expert. The said application is decided on 5.10.2013. Against the said order, Revision was carried bearing Criminal Revision No. 262 of 2013. The learned Revisional Court, in my view, has correctly dismissed the said Revision on 11.8.2014, being filed against interlocutory order.

4] Be that as it may, learned Magistrate, who has decided the application (Exh.38) on 5.10.2013 has not given any thoughtful consideration while deciding the application (Exh.38). Perusal of the order, dated 5.10.2013 clearly shows that the learned Judge of the trial court has not considered the contention put forth either by the complainant or by the accused person. Reasons appearing in the order is the reflection as to what weighed in the mind of court while deciding the application.

5] In that view of the matter, the order, dated 5.10.2013 cannot stand to the scrutiny of law. Consequently, the Writ Petition is allowed. The order, dated 5.10.2013 is hereby quashed and set aside. Learned Magistrate is directed to decide application (Exh.38) afresh by giving opportunity of hearing to both the complainant as well as the

accused person and decide the same in accordance with law. With these observations, Writ Petition is disposed of.

6] It is submitted on behalf of the counsel for the respondent that the complainant is unnecessarily prolonging the matter. It is expected from the complainant as well as the accused to cooperate with the learned Magistrate while deciding the application as well as original complaint.

7] Rule is made absolute accordingly.

8] The Registrar (Judicial) is directed to remit the record and proceedings forthwith.

[V.M.DESHPANDE, J.]

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