

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 792 OF 2014

Smt. Prabha Anand Barathe .. Applicant

Versus

State of Maharashtra & Anr. .. Respondents

Mr. Sunil Lulla h/f R. N. Kachre, Advocate for the applicant
Mrs. A.A. Mane, APP for the respondent-State
Mr. S. P. Kadam, Advocate for R. No. 2.

CORAM:-V. L. ACHLIYA, J.
DATED : -21/04/2015

P.C.

Heard.

2 The applicant (original accused) has filed this application u/s 482 of Cr. P.C., for quashing Criminal Case No. 607/SS/2014, pending on the file of Metropolitan Magistrate's 7th Court, Dadar, Mumbai, mainly on the ground that the cheque in question was not issued in discharge of any legal liability. It is the contention of the applicant that the cheque in question was issued as a security in respect of certain transactions entered in between the applicant and the respondent. It is, further contention of the

applicant that the statutory notice u/s 138 of Negotiable Instruments Act was never served upon the applicant. The complainant has neither produced on record the Deed of Cancellation of Agreement nor produced any documents supporting the alleged transaction and to *prima facie*, show that the cheque in question was issued in discharge of legal liability.

3 On the other hand the learned counsel for the respondent / complainant argued that no case is made out to invoke the inherent jurisdiction of this Court u/s 482 of Cr. P. C., to quash the proceeding. The learned counsel submits that the complaint, *prima facie*, discloses the commission of offence u/s 138 of Negotiable Instruments Act. The learned Magistrate after due consideration of the averments made in the complaint and the documents relied upon in support of complaint has issued the process u/s 138 of Negotiable Instruments Act. There was no illegality committed on the part of the Metropolitan Magistrate in issuing the process. The learned counsel further submits that the contention raised by the applicant for quashing the proceeding are in the nature of defence of an accused which has to be set up and to be

proved during the course of trial.

4 The learned counsel further submits that the notice issued to the applicant/accused was returned unserved with endorsement “not claimed”. The address on which the notice issued and the address as disclosed in the application is one and the same. There is a presumption in favour of the applicant that the cheque in question was issued for consideration. The accused has not disputed issuance of cheque and signature over the cheque. What has been contended is that same was issued as a security. The accused would have to establish the same during the course of trial. Hence, such contentions cannot be looked into in exercise of the powers u/s 482 of Cr. P.C.

5 After examining the rival contentions, in the light of facts disclosed in complaint and the documents filed along with the complaint, in my view, *prima facie*, case has been made out for issuance of the process against the accused. There was absolutely no illegality committed by the learned Magistrate in issuing the process u/s 138 of Negotiable Instruments Act . What has been contended on the part of the applicant/accused that the cheque in

question was issued as a security and not in discharge of legal liability cannot be looked into and examined by this Court in exercise of powers u/s 482 of Cr. P. C. It is for the applicant to take such plea and to establish the same during the course of trial to rebut the presumption that the cheque in question was not issued for consideration. Similarly the other grounds raised by the applicant as to non service of the notice and nature of transaction between the parties, the same cannot be examined in exercise of jurisdiction u/s 482 of Cr. P.C. I am, therefore, not inclined to entertain and admit the application. The application is rejected.

6 It is clarified that none of the observations made during the course of disposal of this application, be treated as view of this Court or any finding recorded by this Court. The trial Court is directed to decide the complaint without influenced by any of the observations made by this Court during the course of disposal of this application.

7 With this order and direction, the application be marked as disposed of with no order as to costs.

(V. L. ACHLIYA, J.)

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