

FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITIN NO. 4117 OF 2014

Office Notes, Office
memorandum of Coram,
appearances, Court's
orders or directions &
Registrar's orders.

Court's or
Judge's orders.

Mr.R.D.Soni i/by Ram & Co. for the Petitioner.
Mrs.M.H.Mhatre, APP. for the State.

CORAM : A.P BHANGALE, J.
DATED : 15 April 2015.

P.C.:

By this petition, the petitioner questioned the order dated 5 February 2010 whereby the process was issued by the learned Judicial Magistrate First Class Court No.3, Pune in Criminal Complaint No.51555/2009 and the judgment and order passed by the learned additional Sessions Judge, Pune dated 12 May 2014 in Criminal Revision Application No.653/2010.

2) After hearing submissions advanced on behalf of the petitioner I have seen the copies of the annexures along with the petition. It appears that Criminal Complaint No.51555 of 2009 was filed by one Mr. Manmohansingh Sona against the partnership firm described as Oxford Oasis through its partners. The complaint had lodged that dishonour of cheque signed

by one of the partner of the said partnership firm bearing Cheque No. 513431 received by the complainant on 31 August 2009 for encashment. According to the complainant cheque has been presented to Standard Chartered Bank, Pune returned with memo dated 3 Sept. 2009. Thereafter, demand notice dated 10 September 2009 sent to the accused in respect of dishonour of cheque which was sent by RPAD and postal service acknowledgment but the accused did not bother to pay the cheque amount Rs.20 lacs. Thus, after recording the verification of the complainant and considering the documents and hearing the submissions it appears that the learned Trial Magistrate was satisfied prima facie that cheque in question was issued by the accused to the complainant and thus, process for an offence punishable under Section 138 of the Negotiable Instruments Act was issued. Order for issuance of process dated 5 February 2010 was challenged before the learned Additional Sessions Court, Pune. He by reasoned Judgment and order dated 12 May 2014 passed in Criminal Revision Application No.653 of 2010 proceeded to dismiss the criminal revision application after recording his satisfaction about the propriety, legality and correctness of the order passed by the Magistrate.

3) The contention on behalf of the petitioner to be examined is that every partner cannot be proceeded in the criminal proceeding and only the signatory of the cheque. In case, any application for discharge is made before the Trial Magistrate, the learned Magistrate concerned can decide the same on its own merits and in accordance with law. At this stage, merely because process was issued against the registered partnership

firm through its partner on the ground that the said firm requires to meet the accusation punishable under Section 138 of the Negotiable Instruments Act is neither defective nor improper, particularly, when the learned Trial Magistrate recorded his satisfaction as to sufficiency of the ground to proceed further against the accused made in the complaint. According to the learned Advocate for the petitioner on behalf of the said registered partnership firm the authorized signatory have not signed the cheque in question. The Trial Magistrate can deal with this contention when application is made before the Trial Court for discharge of the accused, if so advised. Suffice to say that the Trial Magistrate is entitled to proceed against the accused firm on the ground that one of its partner had signed cheque in question. Hence, no merits. Petition is dismissed.

(A.PBHANGALE, J)