

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 4119 OF 2014

Vithoba Mahadev Dalvi & Anr. .. Petitioners

Versus

The State of Maharashtra & Anr. .. Respondents

Smt. Varsha Pallav i/b The Laureate, Advocate for the petitioners
Mr. V. B. Konde-Deshmukh, APP for the respondent-State.
Mr. Balbheem Patil, Advocate for the respondent-No. 2.

CORAM:-M.L. TAHALIYANI, J.
DATED : -23/02/2015

P.C.

Admit. Respondents waive service. By consent of the parties, taken up forthwith for final hearing.

2 Heard learned counsel for the petitioners, learned counsel for respondent No. 2 and learned APP for the respondent-State.

3 The petitioners are facing trial for the offences punishable u/s 138 of Negotiable Instruments Act. This petition is filed for quashing the process issued by the learned Magistrate. As

far as petitioner No. 2 is concerned, the learned counsel after taking instructions from respondent No. 2 has stated that respondent No. 2 will withdraw the complaint against petitioner No. 2.

4 Petitioner No. 1 claims that his signatures were obtained forcibly on blank cheques and the said cheques have been used by respondent No. 2, in filing a false complaint. My attention was drawn to the copy of police complaint filed by the petitioner No. 1 in respect of the alleged act of respondent No. 2. The said copy of the complaint did not mention either account number or cheque numbers. It is also noted that the police have not taken action on the said complaint though it has been lodged in the year 2011. If it is the defence of petitioner No. 1 that the cheques in question were obtained from him by force or his signatures were obtained under duress, the same will have to be proved at the time of trial. This Court could have considered that issue had there been details of the cheques and account number in the complaint. There is no material on record to show that petitioner No. 1 had only one account. Unless there is material on record to indicate that the particular cheque numbers of particular account number of

particular bank were allegedly stolen, the defence of petitioner No. 1 cannot be considered at this stage. He will have to establish his defence before the trial Court. For all these reasons, I pass the following order:

Respondent No. 2 shall withdraw the complaint against petitioner No. 2.

Petition of petitioner No. 1 is dismissed.

(JUDGE)

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