

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 1189 OF 2013

V. Durga Bhavani .. Applicant

Versus

Esem Infotech Pvt. Ltd. & Anr. .. Respondents

Mr. Sharad T.Bhosale h/f D. B. Bodake Advocate for the applicant
Mr. Jaydeep Deo, Advocate for R. No. 1.

CORAM:-V. L. ACHLIYA, J.

DATED : -21/04/2015

P.C.

The applicant (original accused) has filed this application u/s 482 of Cr. P. C., for quashing process issued u/s 138 of Negotiable Instruments Act, against the applicant vide order dated 12/8/2013 passed by 35th Court, J.M.F.C. Pune, on the grounds stated in detail in the application.

2 In nutshell, it is the contention of the applicant that the cheque in question was issued as a security in respect of the transactions which the applicant had with respondent No. 1/complainant. The applicant was not owing any amount and,

therefore, there is no question of issuance of any cheque in discharge of any liability in favour of complainant. The cheque in question which was obtained by the complainant as a security way back in the year 2011 was presented for encashment in the year 2013. Since the accused has instructed to its banker to stop the payment of said cheque from its account in the year 2011, the cheque in question was returned to the complainant with endorsement '*stop payment*'. It is, therefore, the contention of the applicant that since the cheque in question was issued as and by way of security in the year 2011 and at the time of presentation of the cheque, the applicant was not owing any liability towards the complainant, the offence u/s 138 of Negotiable Instruments Act is not attracted in the matter and the learned Magistrate has committed gross error in issuing the process.

3 On the other hand the learned counsel for the respondent submits that the application filed u/s 482 of Cr. P. C. is not maintainable for the sole reason that alternate remedy in the form of revision is available to the applicant. So far as merits of the case is concerned, it is the say of the complainant / respondent that

the contentions raised by the applicant cannot be examined in exercise of jurisdiction u/s 482 of Cr. P.C. What has been contended on the part of the applicant may be set up as defence of the applicant, which will have to be established during the course of trial.

4 Having regard to submissions advanced, I am of the view that no case is made out to entertain the application u/s 482 of Cr. P. C. In exercise of the powers u/s 482 of Cr. P.C., this Court is expected to invoke its inherent jurisdiction, if satisfied that under the facts and circumstances of the case in order to stop or prevent the gross abuse of process of law or it is expedient in the ends of justice to intervene and to invoke powers u/s 482 of Cr. P.C.. No such case is made out by the applicant to invoke powers u/s 482 of Cr. P.C. What has been contended on the part of the applicant that the cheque in question was not issued in discharge of any legal liability but same was issued as a security, the truthfulness of such factual aspect cannot be examined in a proceeding filed u/s 482 of Cr. P.C.. Such plea can be raised and established during the course of trial. I am, therefore, not inclined to entertain the application.

The application is rejected. However, it is clarified that the observations, if any, made during the course of disposal of this application, shall not be construed as view of this Court on the merits of the matter. All options are kept open for applicant to avail the alternative remedy, if any, available under law to challenge the impugned order before appropriate forum.

5 Application is dismissed with no order as to costs.

(V. L. ACHLIYA, J.)

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