

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 5023 OF 2014

Suresh K. Mali

..Petitioner

v/s.

The State of Maharashtra & Ors.

..Respondents

Petitioner in person.

Mr.J.H.Ramugade, APP for the State.

Mr.Piyush Shah for the respondent no.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : AUGUST 27, 2015.

P.C.

1. Rule. Rule made returnable forthwith. By consent of both parties, petition is taken up for final hearing.

2. The respondent no.2 herein had lodged a complaint being C.C.No.4300391/SS/2008 for the offence under Section 138 of the Negotiable Instruments Act against the present petitioner (Accused No.2) and one Kishore Kerkar (Accused No.1).

3. By order dated 14.2.2008, the learned Magistrate has issued process against the petitioner (A-2) as well as Kishote Kerkar (A-1). Aggrieved by the said order, the petitioner has filed this petition.

4. It is the case of the respondent no.2 complainant that the petitioner (A2) had received Rs.11 lakhs on behalf of Kishore Kerkar (A1) with a clear understanding that the said amount would be released to Kishore Kerkar (A1) after finalization of the deal of the property. It is the case of the respondent no.2 complainant that the petitioner (A2) paid the said amount to the accused no.1 without his consent and knowledge and without completing the said property transaction. The respondent no.2 had further stated that Kishore Kerkar (A1) thereafter issued cheque dated 23.10.2007 for sum of Rs.11 lakhs in favour of the respondent no.2 complainant. The said cheque was deposited in Axis Bank, but dishonoured with endorsement “payment stopped by the drawer”. The statutory notice was issued to both the accused and since they failed to make that payment complaint under Section 138 of the Negotiable Instruments Act was filed against both the accused.

5. It may be mentioned that it is a settled law that except the cases covered by 141 of N.I.Act, only the drawer of the cheque can be prosecuted under Section 138 of the N.I.Act. In the instant case, the cheque was issued by the accused no.2 and not by the petitioner and since the petitioner herein was not a drawer of the cheque he could not have been prosecuted under Section 138 of the N.I. Act. Under the circumstances, the petition is allowed.

6. The order dated 14.2.2008 in CC. No. 4300391/SS/2008 is hereby quashed qua the petitioner Suresh Krishna Mali.

(ANUJA PRABHUDESSAI, J.)

CERTIFICATE

Certified to be true and correct as per the original signed judgment/order.