

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 38 OF 2007

Nandkumar s/o Vishwanath Gadam,
Age 44 years, Occ. Business
R/o. Majalgaon, Tq. Majalgaon
District Beed

...Petitioner

versus

1. The State of Maharashtra
(Copy to be served on P.P.
High Court of Bombay,
Bench at Aurangabad)
2. Shivshakti Co-op. Sugar factory
Ltd. Tandalwadi, Tq. Washi
District Osmanabad
Through Sanjivan Trimbakrao Kukade
Age 37 years, Occ. Service,
R/o. Washi, Tq. Washi,
district Osmanabad

...Respondents

...
Advocate for Petitioner : Mr. Shrikishan S Shinde
APP for Respondent No.1: Mr. A.R. Kale
Advocate for Respondent No.2 : Mr. S.B. Choudhari

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CORAM : V. K. JADHAV, J.
DATED : 15th SEPTEMBER, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the order dated 24.8.2004, passed by the learned Judicial Magistrate, First Class, Bhoom below Exh.1 in S.C.C. No. 586 of 2004, thereby issuing process against the petitioner under Section 138 of Negotiable Instruments Act and the order dated 14.12.2006 passed by 2nd Adhoc Additional Sessions

Judge, Osmanabad, in criminal revision application No. 144 of 2004, the petitioner original accused has filed present criminal writ petition.

2. Brief facts giving rise to the present writ petition are as follows:-

a) Respondent No.2 original complainant had filed a complaint before the J.M.F.C. Bhoom alleging therein that the cheque issued by the petitioner original accused for an amount of Rs.3,18,368.12 drawn on Osmanabad Janta Sahakari Bank Limited, Osmanabad Branch Washi, came to be dishonoured. Respondent complainant had issued notice to the petitioner accused. Thereafter, the respondent filed complaint before the Magistrate as soon as the cause of action accrued in the case.

b) It has also alleged in the complaint that the respondent-sugar factory entered into an agreement with the brother of the present petitioner for carting of sugarcane in motor vehicles and accordingly brother of petitioner obtained advance amount from the respondent-sugar factory to the tune of Rs.3,75,000/- for the crushing season 2002-03. The petitioner original accused stood as guarantor to the said transaction and thereafter an amount of Rs.3,18,368.12 found recoverable from the brother of petitioner and thus, the present petitioner has issued cheque for

the said amount. Since the said cheque was dishonoured when it was presented by the respondent-sugar factory, the complaint came to be filed before the court under Section 138 of Negotiable Instruments Act, 1881.

c) On the basis of these allegations, after recording verification statement of representative of complainant-sugar factory, learned Magistrate, by order dated 24.8.2004 issued process against the petitioner accused for the offence punishable under Section 138 of Negotiable Instruments Act. Being aggrieved by the same, the petitioner accused had preferred criminal revision application No. 144 of 2004 before the Sessions Court at Osmanabad and learned 2nd Adhoc Additional Sessions Judge, Osmanabad by its impugned order dated 14.12.2006 dismissed the said revision. Hence, this writ petition.

3. Learned counsel for the petitioner submits that prior to filing of the said complaint, respondent sugar factory had issued legal notice on 28.7.2003 to the petitioner alleging therein that though he had obtained an amount of Rs.2,50,000/- as an advance for carting the sugarcane for the crushing season 2002-03, the petitioner had not provided the vehicles for the same. Thereafter, respondent sugar

factory persuaded the petitioner to return the said advance amount alongwith interest. The petitioner accordingly, issued a cheque No. 468771 for Rs.2,87,134/-. The respondent sugar factory had presented the said cheque with its banker, however, the same came to be dishonoured. In reply to the said notice, the present petitioner contended that he had entered in an agreement with respondent sugar factory for the crushing season 2002-03 and in terms of the said agreement, provided one tractor and three trucks to the sugar factory for carting the sugarcane and respondent sugar factory had given him advance amount of Rs.5,00,000/- for that purpose. The petitioner has specifically stated in his reply that as security for the said advance amount of Rs.5,00,000/-, the respondent sugar factory had obtained three signed blank cheques from him and thus sugar factory subsequently with some ulterior motive misused the said blank cheques. Learned counsel submits that the petitioner had mentioned the numbers of said three blank cheques in his reply and respondent sugar factory had thereafter used another blank cheque showing transaction between the sugar factory and brother of the petitioner and accordingly filed false complaint against him. Learned counsel for the petitioner submits that learned Sessions Judge has decided the criminal revision application without affording an opportunity of being heard to the petitioner. Learned counsel submits that the petitioner never issued cheque to respondent No.2 with

regard to the alleged transaction entered by his brother with the sugar factory.

4. Learned counsel for the respondent original complainant submits that scope of enquiry under Section 202 of Cr.P.C. is very limited and after recording verification statement of the complainant and on perusal of contents of complaint, learned Judge of the trial court has rightly issued process for the offence punishable under Section 138 of Negotiable Instruments Act, since prima facie case is made out against the petitioner accused. Learned counsel submits that defence of accused cannot be considered at the stage of issuance of process and the petitioner accused is always at liberty to raise defence available to him during the course of trial. Learned counsel submits that there is no substance in the writ petition and writ petition is liable to be dismissed.

5. It is true that the scope of enquiry under Section 202 of Cr.P.C. is extremely limited and the Court has to see whether prima facie case is made out for issuance of process or not. In the instant case, the cheque with certain amount is signed by the present petitioner and respondent sugar factory has presented the said cheque in the bank. Furthermore, as intimated by the bank, the said cheque came to be dishonored for want of sufficient funds in the account of the

petitioner accused. Even though the respondent sugar factory has issued demand notice to the petitioner accused, instead of complying the demand made in the notice, petitioner accused has denied the contents thereof. The respondent sugar factory has also submitted original cheque, office copy of demand notice and acknowledgement of the said demand notice by the petitioner accused, before the Court alongwith the complaint.

6. At the stage of issuance of process, there is no reason for the Court to consider the defence available to the petitioner accused. The petitioner accused can raise the defence during the course of trial that respondent sugar factory had obtained the blank cheques from the petitioner accused as a security for the transaction entered into by the sugar factory with the brother of the petitioner accused, the respondent sugar factory had misused the said cheque and filed a false complaint against the petitioner. However, this defence cannot be considered at the time of issuance of process. The learned Magistrate has rightly passed order of issuance of process for the offence punishable under Section 138 of Negotiable Instruments Act against the petitioner accused. The learned 2nd Adhoc Additional Sessions Judge, Osmanabad has confirmed the said order on the ground that the complaint is based on documentary evidence.

7. In the light of above discussion, I do not find any substance in the writ petition. No interference is called for. The order impugned in this petition is proper, correct and legal. Writ petition is devoid of any merits and the same is liable to be dismissed. The writ petition is accordingly dismissed. Rule discharged.

(V. K. JADHAV, J.)

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