

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1328 OF 2015

Prerna Industries,
Proprietor Rahul Shrimal Kathed,
Age 39 years, Occu. Business,
R/o G. 122/2/B-1 MIDC.,
Ahmednagar

.. Applicant

Versus

Shri M.R. Enterprises,
Proprietor Nirjala Gunanad Mishra,
Age Major, Occu. Business,
R/o No.1, Plot No.14, Divyadrushti
Co-operative Housing Society,
RK Nagar, Anand Road, Deolali Camp,
Taluka and District Nashik

No.2 r/o F-11, Sancheti Ware
Housing Complex, Mumbai-Agra
road, Jawulke, Ozar, Taluka and
District Nasik

.. Respondent

Mr N.L. Jadhav, Advocate for applicant
Mr N.B. Narwade, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 8th March 2016

PER COURT

1. The present application is by the complainant. The complainant filed complaint for an offence punishable under Section 138 of Negotiable Instruments Act against one Nirjala Mishra.

2. It is claimed that the complainant is a proprietor of furniture industry and has supplied certain products to the respondent, resulting into issuance of cheque. It is claimed that the cheque that was issued was dishonoured towards consideration of furniture supplied, resulting into filing of complaint bearing No.238 of 2013. The said complaint came to be dismissed by acquitting the accused person by judgment

and order dated 4th February 2015 by learned Judicial Magistrate, First Class, Ahmednagar, as such present application.

3. Mr Jadhav, learned Counsel for the applicant-complainant would urge that once the cheque is issued in favour of the applicant, the presumption is that the same is for an admitted debt, which according to him is overlooked by the learned Magistrate. His second submission is that once notice under Section 138 of the Negotiable Instruments Act is issued, the applicant cannot have any control over as regards its service, once the same is posted on the correct address of the accused person. According to him, as such, the service of notice on the accused ought to have been presumed. The third limb of submission is that the signature on the cheque in question was in the capacity of the partner of the firm and as such, complainant has every right to claim the dues from the partnership firm of which the accused is one of the partner, even though cheque is not signed – issued in that capacity.

4. Per contra, learned Counsel for the respondent – accused would urge that learned Magistrate has examined all the facets of the matter and has reached to conclusion that there was no admitted liability and the signature on the cheque was observed to be not that of present respondent and there is no evidence to that effect on record. He would then submit that the notice under Section 138 of the Negotiable Instruments Act was not served on the respondent though the statute mandates so. According to him, the learned Magistrate was right in dismissing the complaint.

5. With the assistance, I have perused the findings recorded in the light of the evidence that was brought on record.

6. Based on the documentary evidence, the learned Magistrate has proceeded to record that the present applicant has come out with the case that the present respondent is liable for the payment and she has signed the cheque for the same. However, the fact remains that the said stand was changed by the applicant during the trial and in absence of any pleading that the cheque was issued for and on behalf of partnership firm. Having noticed so, the trial Court has given right verdict of acquittal/dismissal of the complaint.

7. The learned trial Court then examined issue as regards the signature on the cheque and has reached to a conclusion that there is no material evidence on record to conclude that the cheque was signed by the present respondent. The trial Court has also noticed that the signature on the acknowledgement of the notice under Section 138 of Negotiable Instruments Act does not match with the signature of the present respondent and as such, dismissed the complaint.

8. In my opinion, the submissions as are canvassed are duly taken care of by the learned Judicial Magistrate, First Class, Ahmednagar based upon the iota of evidence that was brought on record. The order of dismissal of complaint is well reasoned and is based on the material that was brought to the notice of learned Magistrate. No case for interference is made out. As such, Criminal Application stands rejected.

(N.W. SAMBRE, J.)

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