

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

CRIMINAL WRIT PETITION NO. 736 OF 2014

Rajesh s/o Motheba Mhaske,
Age: 40 years, Occ: Agri/Contractor,
R/o. Village Bellora, Tq. Jafrabad,
Dist. Jalna.

...Petitioner

versus

1. Prasad s/o Pandurang Kale,
Age: 37 years, Occ: Advocate,
R/o. Plot No. 98, Saileela Niwas,
Shastrinagar, Aurangabad.

2. The State of Maharashtra

...Respondents

.....
Mr. J.V. Deshpande, Advocate for petitioner
Mr. R.V. Dasalkar, A.P.P. for respondent No. 2
.....

CORAM : N.W. SAMBRE, J.

DATE : 1st APRIL, 2016

ORAL ORDER :

The petitioner has questioned the proceedings initiated pursuant to the complaint filed for the offence punishable under Section 138 of the Negotiable Instruments Act vide Summary Criminal Case No. 3411 of 2012, pending on the file of learned Judicial Magistrate, First Class, Aurangabad.

2. While questioning the legality, learned Counsel for the petitioner has invited attention of this Court to the order dated

18/08/2012, wherein the Magistrate has placed the matter for recording verification, which according to him, the verification is not signed by the Magistrate. He would then invite attention of this Court to the evidence of complainant recorded on 09/06/2014 so as submit that in verification, there are certain overwriting/scoring in the handwriting of the complainant. He would then submit that verification was not signed by the Magistrate and as such, same vitiates the proceedings. According to him, the matter can be re-sent for conducting summary trial afresh.

3. Respondent No. 1 though served, none appears.

4. Upon perusal of the record, it depicts that the Magistrate, by an order dated 18/08/2012 has ordered issuance of process against the petitioner-accused. While ordering so, the Magistrate has referred to verification and other documentary evidence as is placed on record. As a consequence thereof, it has to be presumed that the Magistrate has applied his mind to the verification which is part of the record of the trial Court and having satisfied so, has ordered the issuance of process, as is reflected in the same order.

5. In this background, in my opinion, the claim that verification is not signed by the Magistrate will be of hardly any

assistance. Furthermore, even if it is admitted by witness that he has scored certain part of verification, still the fact remains that the Magistrate has taken cognizance of the same as was brought before it at the relevant time alongwith scoring. In this view of the matter, no case for interference is made out. As such, the writ petition fails and stands dismissed.

[N.W. SAMBRE, J.]