

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 698 OF 2016

SUNIL S/O GHANSHYAMDAS PANCH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Shri Gangakhedkar S.S.
APP for Respondents: Shri Kendre S.N.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 13, 2016
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PER COURT :-

1. The petitioner is aggrieved by the order dated 18.11.2014, passed by the learned Judicial Magistrate (F.C.), Jalna, by which, summons have been issued against the petitioner and another accused.

2. Grievance is that a proprietary firm, by name, Ghanshyamdas Narayandas Panch is involved in the matter of dishonoring of a cheque issued on 28.7.2013. Accused No.1, namely, Shri Ghanshyamdas Bansilal is the proprietor of the firm and the petitioner is merely a son of the proprietor.

3. It is submitted that a hand loan for an amount of Rs.11,00,000/- is purportedly taken by the petitioner from the respondent No.3 / complainant and the cheque issued by the petitioner has been dishonored for the reason, "Funds Insufficient." The complainant, therefore, filed STC No.1726 of 2014 before the trial Court alleging an offense having been

committed under Section 138 of the Negotiable Instruments Act. Contention is that when a proprietary firm is involved, though the petitioner may have signed the cheque, the complaint under Section 138 would not be maintained against such a signatory.

4. It is strenuously contended by the learned Advocate that the complaint dated 9.9.2013 filed by the complainant does not set out any specific allegation or accusation against the petitioner and does not make out any case against him. Due to lack of pleadings process could not have been issued by the learned Magistrate against the petitioner. At best, such process could be issued against accused No.1 - respondent No.2 herein, who is the proprietor.

5. Reliance is placed upon the judgment of the Honourable Supreme Court in the matter of Raghu Laxminarayanan Vs. M/s Fine Tubes [AIR 2007 SC 1634], to contend that a proprietary firm is conceptually distinct from a company or a partnership firm and hence process cannot be issued against an employee of such a proprietary firm.

6. The learned APP for respondent No.1 supports the impugned order.

7. I have considered the submissions of the learned Advocates.

8. It is specifically averred in paragraph No.1 of the complaint filed by the complainant that accused No.2, who has issued the cheque, is the

authorized signatory of the proprietary concerned. In paragraph No.2 of the complaint, the personal and family relations between the complainant and the petitioner have been narrated. In paragraph Nos.3 and 4 of the complaint, it is specifically stated that a hand loan of Rs.11,00,000/- was sought by the petitioner from the complainant on an assurance that the same would be repaid forthwith.

9. I find, prima facie, that the reason for the accused having issued the cheque, which has been dishonored, is a private transaction and not a business transaction. The petitioner has sought for a hand loan and it is specifically averred in the complaint that the money was given to him. He received the money and issued a cheque under his own signature for returning the hand loan. The said cheque has been dishonored for the reason "Funds Insufficient".

10. In my view, prima facie, there is material available against the petitioner and the cause of action originates on account of a private transaction between the petitioner and the complainant. Though the cheque has been issued from the account of the proprietary firm, it is specifically averred that the petitioner is the authorized signatory. It cannot be ignored that the reason for dishonoring the cheque is not on account of an unauthorized person issuing the cheque but for the reason of "Funds Being Insufficient". Prima facie, this indicates that the petitioner is the authorized signatory for issuing the cheques on behalf of the firm.

11. In the light of the above, I do not find that the learned Judicial Magistrate (F.C.) has committed any error in issuing the summons.

12. This petition, being devoid of merits, is dismissed

(RAVINDRA V. GHUGE, J.)

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