

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

CRIMINAL APPLICATION NO.3714 OF 2015

M/s Umedmal Bhikulal,
A registered partnership firm,
through its Partner
Smt. Prema Kantichand Golecha
through her G.P.A. Holder
Rajendra s/o Kantichand Golecha
Age 47 years, Occ. Business,
R/o Parbhani Road,Basmath,
Tq. Basmath, District Hingoli

... **APPLICANT**

VERSUS

1. Saibaba Trading Company,
Through its Prop.
Sanjay R. Agrawal,
Age major, Occ. Business,
R/o Shiradshahapur,
Tq. Aundha (N),
District Hingoli

2. The State of Maharashtra
(Copy served upon P.P.
High Court,
Bench at Aurangabad)

... **RESPONDENTS**

.....
Shri S.S. Rathi, Advocate for applicant
Shri P.N. Kutti, A.P.P. for respondent/ State
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 5th May, 2016.

ORAL JUDGMENT :

1. Heard counsel for the applicant - original complainant and learned A.P.P. for respondent No.2/ State. In this matter, this Court earlier issued notice to the respondent No.1 - original accused. However, now it is noticed that, in the trial Court, the complaint came to be dismissed even before the process was issued. At the stage of issue of process, the procedure does not contemplate hearing the accused. As such, it is not necessary to further pursue this matter for service of notice on the respondent No.1 - original accused. The limited question is, whether opportunity should have been given to the complainant to record his verification. The question of issue of process is to be considered under Chapter XV of the Code of Criminal Procedure. The stage of Section 256 of the Code of Criminal Procedure was not yet reached because Section 256 provides that, if summons has been issued on complaint and thereafter complainant remains absent, the Magistrate would have discretion to acquit the accused.

2. The learned counsel for the applicant - complainant has tendered across the bar certified copy of application which was filed on 15.4.2015 for adjournment as the complainant had some difficulty. It was a fresh matter dated 3.3.2015, which had been registered by the Court of Judicial Magistrate, First Class on 9.3.2015. It is not clear how the Magistrate observed that the complaint had been filed on 5.2.2015 and proceeded to reject the application and dismiss the complaint. It was unreasonable on the part of the trial Court not to give some breathing time to the complainant especially when the complainant had filed an application.

3. The effect of the order passed by the trial Court is that of "discharge" where fresh complaint would not be barred. However, looking to the fact that the present complaint arises out of Section 138 of the Negotiable Instruments Act, which requires filing of a complaint in a particular time after notice has been issued, it would be appropriate to invoke revisional jurisdiction by this Court and correct the orders which have been passed by the trial Court. The trial Court, without recording verification, passed orders stating that the complaint was being dismissed for want of verification under section 203 of the Code

of Criminal Procedure. Section 203 of the Code of Criminal Procedure can be invoked only after considering the statement on oath, if any, of the complainant and of the witnesses, and the result of the enquiry or investigation, if any, under section 202. The said stage was yet not reached. Thus, the impugned order cannot be maintained.

4. The earlier order issuing notice to respondent No.1 - original accused, are recalled, and invoking revisional jurisdiction, the impugned order dated 15.4.2015 passed by the Judicial Magistrate, First Class, Kalamnuri are quashed and set aside. The complaint is restored. The trial Court shall give opportunity to the complainant and record verification as contemplated in Chapter XV of the Code of Criminal Procedure. The complainant shall appear before the trial Court for verification on 23rd May 2016. This application is accordingly finally disposed of.

(A.I.S. CHEEMA, J.)