

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 5215 OF 2004

M/s. Vasu Traders & Ors.

..Applicant

v/s.

Nitin Dedhia & Anr.

..Respondents

Ms.Rushita Jain i/b. Law Global for the Applicant

Mr.N.K. Dayanandan for the respondent no.1

Mr. J.H.Ramugade, APP for the Respondent-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : FEBRUARY 17, 2016.

P.C.

1. This is an application filed under Section 482 of Cr.PC. challenging the order of issuance of process dated 13.4.2004 in Criminal complaint No.1027 of 2004 filed under Section 138 of the Negotiable Instruments Act.

2. Heard the learned counsel for the applicant and the learned Counsel for the respondent.

3. A perusal of the records prima facie indicates that the applicant herein had availed loan of Rs.50,000/- from the respondent herein. The applicant had issued cheque dated 5.3.2004 for Rs.50,000/-

towards repayment of the said loan. The said cheque was dishonoured on 6.3.2004 with an endorsement "funds insufficient". By notice dated 10.3.2004 the respondent complainant called upon the applicant to pay the said amount. The applicant had replied to the said notice vide reply dated 23.3.2004. The applicant contends that he had forwarded the demand draft for Rs.50,000/- along with reply dated 23.3.2004.

4. It is not in dispute that the respondent complainant had received the said demand draft for Rs.50,000/-. The contention of the respondent is that the said demand draft was not received with the reply but the demand draft was received on the same date that the complaint was filed. Since the complainant had already received the amount of Rs.50,000/- on the date the complaint was filed, in my considered view, no fruitful purpose would be served in proceeding with the matter which is otherwise of the year 2004.

5. In view of the above facts and circumstances, the impugned order is set aside and the proceedings of the criminal case No.1027 of 2004 are closed.

(ANUJA PRABHUDESSAI, J.)