

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3095 OF 2016
WITH
WRIT PETITION NO. 3098 OF 2016

Deepak Sharma

... Petitioner

Vs.

The State of Maharashtra & Anr.

... Respondents

Mr. Laxmal P. Kanai, Advocate for the petitioner in all the petitions.

Mr. S.R. Agarkar, APP for the respondent/State.

Mr. Maneesh Dixit, Advocate for respondent no. 2 in all matters.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 22nd December, 2016

P.C.:

These Writ Petitions are preferred by the petitioner/original accused in respect of complaint directing against the order dated 25th June, 2014 passed by the learned Metropolitan Magistrate presiding in 59th Court, Kurla, Mumbai in Case No. 1744/SS/2014 of issuing process under section 138 of Negotiable Instruments Act. In these Writ Petitions, the petitioner further challenged the order dated 29th July, 2016 passed by the learned Sessions Judge, Mumbai in Revision Application No. 255 of 2016 thereby confirming the order of issuance of process issued by the learned Metropolitan Magistrate.

2. At the time of hearing of these Writ Petitions, it is argued by the learned counsel for the petitioner that in the impugned order of issuance of

process though the learned Metropolitan Magistrate has mentioned "Read the complaint and verification", the verification was not recorded by the learned Magistrate at the time of issuance of process. Thus, without verification, the process was issued under section 138 of Negotiable Instruments Act, which clearly shows non-application of mind. The learned counsel for the petitioner has submitted that in this two Petitions, the process was issued only under section 138 of N.I., Act, however, the petitioner is not a signatory to either of the cheques which was dishonoured and the subject of those criminal cases. In order to issue process under section 138 of N.I. Act, a person should be signatory to the impugned cheque. The learned counsel for the petitioner has submitted that the petitioner has resigned much prior before the cheques were dishonoured and, therefore, he submitted that on this ground alone, these Petitions be allowed.

3. The learned counsel for respondent no. 2/original complainant has submitted that in all 8 criminal cases were filed by respondent no. 2 against the accused persons wherein the present petitioner is one of the accused. He pointed out that a verification was recorded in two cases, i.e., in Writ Petition No. 3096 of 2016 and Writ Petition No. 3099 of 2016. The learned counsel further submitted that the complainant was present when he was called for verification, however, he confirms the submissions

made by the learned counsel for the petitioner that in these matters, verification was not recorded by the learned Magistrate, as after taking search of the record of the said cases pending before the learned Magistrate, no such verifications were found.

4. Perused the papers of all these Writ Petitions. The learned counsel for the petitioner has produced roznama of all the criminal cases. Section 202 of Cr. P.C. states that verification of the complainant is a must and without verification of the complainant, process cannot be issued. So far the proceedings are concerned, in all these matters, process was issued without verifying the complainant. However, the fact is also to be taken into account that at a time, 8 Petitions were filed and process was issued in each one but on the different dates. In two cases, the complainant was examined on oath and verification to that effect is on record. To examine the complainant on oath before issuing the process is strictly a function of the Court. As verification is found in two matters and the parties in all 8 cases are same, it appears that surely due to inadvertence the Magistrate did not examine the complainant on oath and his verification was not recorded in these matters. This omission due to inadvertence cannot render the complainant without remedy and, therefore, I am of the view that these matters are to be remanded back to the learned Magistrate for examining the complainant on oath in the respective cases and learned

Magistrate may consider taking of cognizance of the offence and it is to be done till 31st January, 2017.

5. Writ Petitions are disposed of.

(MRIDULA BHATKAR, J.)