

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3823 OF 2015

Munnabar Ali. ... Petitioner.  
Versus  
The State of Maharashtra & ors. ... Respondents.

---

Mr. Q.M. Ashfaq, advocate for petitioner.

Mr. M. D. Mali, advocate for Respondent No. 2.

Ms. A.A. Mane, APP for State.

---

**CORAM : RAVINDRA V.GHUGE, J**  
**DATE : JULY 8, 2016**

**P.C.:**

1 The petitioner is aggrieved by the impugned judgment of the learned Metropolitan Magistrate, 28<sup>th</sup> Court, Esplanade, Mumbai dated 1<sup>st</sup> April, 2013 and the order dated 17<sup>th</sup> July, 2015 passed by the learned Sessions Judge, Gr. Bombay.

2 Respondent No. 2 is the original complainant before the learned Magistrate in C.C. No. 1065/SS/2009, by which he had complained of

the dishonouring of the cheques for a total amount of Rs. 4 Lakhs. The Petitioner was impleaded as respondent/accused No. 1 and his purported firm was arraigned as accused No. 2 which is respondent No. 3 in this petition.

3 By the impugned judgment dated 1<sup>st</sup> April, 2013, the learned Magistrate arrived at a conclusion that the petitioner namely Munnabar Ali, proprietor of M/s. Creative Menswear is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and shall suffer S.I. for 3 months. The petitioner was directed to pay compensation of an amount of Rs. 5 Lakhs.

4 The petitioner preferred Criminal Revision Application No. 461 of 2013 before the learned Sessions Judge, which was dismissed by the impugned order dated 17/7/2015.

5 I have heard the learned advocate for the respective sides at length. Considering the submissions of the learned advocates and

the record available in the petition, a peculiar situation has arisen, which can be summarised as follows :

- (a) The petitioner claims to be the owner of the building at A-145/75, Street No. 1, Krishna Puri Mandawali, Fajalpur, Delhi 110092.
- (b) M/s. Creative Menswear is said to be proprietary firm operating its business from the premises rented from the Petitioner as a shop.
- (c) The petitioner is an employee of the Government of India and is not the proprietor or owner of respondent No. 3 M/s. Creative Menswear.
- (d) Respondent No. 2 original complainant entered into a garment business with M/s. Creative Menswear.
- (e) All the cheques at issue have been issued by one Masroor Ali, who is said to be the proprietor of Creative Menswear.
- (f) All the cheques at issue were never signed or delivered by the Petitioner to the complainant.

(g) The petitioner does not hold an account in Oriental Bank of Commerce, Sikka Chambers, Vikas Marg, Laxmi Nagar, Delhi-110092, or with UCO Bank, Pahadganj, New Delhi- 110055.

(h) These proceedings can be termed as being cases of mistaken identity.

(i) No written say was filed by the petitioner before the learned Magistrate, in response to the complaint filed by the original complainant.

(j) The Petitioner did not step into the witness box.

(k) The impugned Judgment directs the petitioner to pay the compensation, (the petitioner claims that he is neither a businessman nor a proprietor of M/s. Creative Menswear and had not entered into any business with the complainant.).

6 The learned advocate for respondent No. 2 has strenuously defended the impugned Judgment. He submits that the complainant had entered into garment business with the petitioner, who had projected himself as being the proprietor of Creative Menswear.

Earlier, the petitioner himself had made certain payments to the complainant and those cheques were honoured and the amount was credited to the account of the complainant. He further submits that the dispute has arisen since two cheques at issue were dishonoured on account of “insufficient funds” and two cheques were not honoured, since the petitioner instructed the Oriental Bank of Commerce to stop the payment.

7 I find it quite astonishing that the Petitioner who claims to be a stranger to the business transaction of the complainant with M/s. Creative Menswear and who insisted that he had not issued any cheque, since he was only a landlord, has not put up this defence before the learned Magistrate. It is strenuously attempted to submit that this is a case of mistaken identity. It is also canvassed that because the learned advocate for the petitioner did not take efforts, evidence of the complainant has virtually gone unchallenged. It is contended that damage has been caused to the petitioner's case on

account of the conduct of the learned advocate and the petitioner is made to suffer.

8 After hearing the learned advocates and going through the documents on record, I find that there are some missing links as follows :

(a) No evidence has been brought on record to indicate, as to who is the proprietor of Creative Menswear.

(b) If the account in the name of M/s. Creative Menswear was opened with the Oriental Bank of Commerce and the UCO Bank, it presupposes that the evidence of the existence of the said proprietary firm must have been placed before the banks and the banks must have checked the credentials of the firm before permitting it to open an account. This aspect is not brought on record.

(c) The details as to whether the two accounts, from which the four cheques have been issued, stand in the name of a particular identity, has also not been brought before the learned Magistrate.

9 In my view, if the above aspects had been brought before the learned Magistrate, it would have been apparent as to who the real owner of the firm is and as to whether these two accounts held with the Oriental Bank of Commerce and the UCO Bank were standing in the name of the petitioner. I also find that very little efforts have been put in on behalf of the petitioner in so far as his participation in the proceedings before the learned Magistrate is concerned. Nevertheless, it cannot be ignored that the learned advocate alone cannot be faulted for the deficiencies. The petitioner himself is largely responsible for all that has happened, keeping in view that it is the responsibility of the litigant to pursue his matter and be vigilant and diligent.

10 Be that as it may, I find that it would be a miscarriage of justice, if at all this case is indeed one of mistaken identity. It is on this premises that I find that the matter needs to be remitted back to the learned Magistrate, by ensuring that the rigours of litigation being suffered by the original complainant are reduced by asking the

petitioner to deposit the entire amount of compensation of Rs. 5 Lakhs before the learned Magistrate. It is informed that an amount of Rs. 1,25,000/- has already been deposited before the learned trial Court.

11 In the light of the above, this petition is partly allowed. The impugned orders dated 1/4/2013 passed by the learned Metropolitan Magistrate, 28<sup>th</sup> Court, Esplanade, Mumbai in C.C. No. 1065/SS/2009 and dated 17/7/2015 passed by the learned Additional Sessions Judge, Greater Bombay in Cr. Revision Application No. 461 of 2013 are quashed and set aside. C.C. No. 1065/SS/2009 is restored to the file of the learned Metropolitan Magistrate, 28<sup>th</sup> Court at Esplanade, Mumbai.

12 The litigating sides before this Court shall appear before the learned Metropolitan Magistrate on 28<sup>th</sup> July, 2016 and formal notices therefore, need not be issued to these parties.

13 The Petitioner shall deposit an amount of Rs. 3,75,000/- with the learned Magistrate within a period of 4 weeks from today. Needless to state that if this amount is not deposited in four weeks, this order shall stand recalled and this petition shall then stand dismissed by restoring the impugned judgments.

14 After appearing before the learned Magistrate on 28<sup>th</sup> July, 2016, the Petitioner shall file his written statement supported with an affidavit and accompanying documents, as he may deem fit within a period of 3 weeks.

15 The oral and documentary evidence, which is already recorded, shall not be discarded and in addition thereto, the Petitioner may be permitted to cross-examine the complainant and his witnesses and lead evidence, if any. It is expected that the learned Magistrate would decide the said proceedings, as expeditiously as possible and preferably on or before 28/2/2017.

16 The litigating sides are precluded from taking any adjournment on trivial and unreasonable grounds.

17 The learned advocate for respondent No. 2/original complainant prays for leave to withdraw the said amount. He is at liberty to make the said request to the learned Magistrate, who may consider the said request on its own merits.

**(RAVINDRA V.GHUGE, J)**