

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**WRIT PETITION NO. 4724 OF 2015
WITH
WRIT PETITION NO. 4725 OF 2015
WITH
WRIT PETITION NO. 4726 OF 2015**

M/s. Venkatesh Multicon Pvt. Ltd. & Ors. ... Petitioners
Vs.
Mr. Natwarlal Nanabhai Suratwala & Anr. ... Respondents

Mr. Rajiv Patil, Senior Advocate i/b. Mr. Prashant Patil for the petitioners.
Mr. Yuvraj P. Narvankar, Advocate for respondent no. 1.
Mr. Yogesh Y. Dabke, APP for the respondent/State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **9th December, 2016**

P.C.:

Rule. By consent, rule is made returnable forthwith

2. In these three Writ Petitions, three proceedings which are conducted under section 138 of Negotiable Instrument Act are challenged. Respondent no.1, who is original complainant was the owner of the land, who by the registered sale deed dated 30th December, 2013 sold his land for Rs.6,47,50,000/-. Towards the transaction and the payment of consideration, one cheque of Rs.1 crore and two cheques each of Rs.81,25,000/- were paid to the complainant by petitioner no. 2, i.e., proprietary firm owned by petitioner no. 1(a). All the cheques were bounced. The original complainant filed three private complaints under

section 138 of N.I. Act before the learned Magistrate in Pune, who interalia, issued process under section 138 of N.I. Act. The petitioners moved to the Sessions Court by filing respective Criminal Revision against the order of issuance of process. However, all these Revisions were dismissed by the common order dated 27th October, 2015. Hence, these three petitions are filed thereby the petitioners prayed that original orders of issuance of process in all the three cases so also the judgment and order dated 27th October, 2015 passed by the learned Sessions Judge are to be quashed and set aside.

3. The learned senior counsel for the petitioners has submitted that it is a pure civil transaction. He submitted that the petitioners have filed a Civil suit for declaration and right of easement, as question of right was involved in the transaction. He submitted that taking recourse in the criminal Courts by the original complainant is nothing but his twisting of hand to extract money from the petitioners. The learned counsel has further submitted that payment was made by petitioner no. 1(a), who is the sole proprietor of Venkatesh Construction, hence petitioner no. 1(b), who is wife of petitioner no. 1(a) is not concerned with this cheque transaction. She is unnecessarily involved in this case. The learned counsel further submitted that the petitioner is ready to settle the matter, however, the respondent is not coming forward. He submitted that considering these

facts, the abuse of process of law is evident and, therefore, he prays that the process be quashed and the judgment of the Sessions Court be set aside by invoking jurisdiction under Article 227 of the Constitution of India. The learned senior counsel for the petitioners submitted that out of Rs.6,47,00,000/-, the petitioners have paid Rs.3,25,00,000/-.

4. The learned counsel for the respondent/original complainant opposed these petitions. He submitted that the petitioners are in possession of the land and they owe consideration amount of which the respective cheques were bounced. He submitted that the respondent/original complainant has filed the civil suit for cancellation and declaration of the sale deed. He further submitted that sale deed is silent about any such right of road or way. He further points out that in the complaint there are details of bouncing of cheque. The fact of payment of Rs.3,25,00,000/- is disputed by the learned counsel for the respondent.

5. Perused the complaint and verification of the original complaint wherein the details of the transaction, payment and bouncing of cheque are given. Petitioner no. 1(a) and 1(b) are the husband and wife and they are the directors of petitioner no. 1 Company, who had entered into land transaction with the respondent/original complainant. However, the cheques were issued in the name of petitioner no. 2 wherein petitioner no.

1(a) is a sole proprietor. Thus, the petitioners prima facie are interlinked. The liability of each party, i.e., petitioners is a matter of evidence before the trial Court. However, at this stage, considering the material before this Court, it cannot be said that there is abuse of process of law. Hence, I am not inclined to invoke powers under Article 227 of the Constitution of India. Hence, Writ Petitions are dismissed.

6. The observations made in this order may not come in the way of trial and an appropriate decision will be taken, uninfluenced by these observations.

(MRIDULA BHATKAR, J.)