

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

CRIMINAL APPLICATION NO. 1390 OF 2006

Natwarlal Motilal Mehta
Age: 71 years, Occu.: Business,
R/o 42-A, New Cotton Market Yard,
Ajantha Road, Jalgaon.

..APPLICANT

VERSUS

1. State of Maharashtra

2. Sitaldas Narayandas
Through Proprietor of
Pawankumar Sitaldas Nathani
Age: 46 years, Occu.: Business,
R/o 9, Agricultural Produce Market Committee,
Ajantha Road, Jalgaon.

..RESPONDENTS

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Mrs. C.S. Deshmukh, Advocate for applicant.
Mr. G.O. Wattamwar, A.P.P. for Respondent No.1 - State.

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**CORAM : T.V. NALAWADE, J.
DATED : 02nd FEBRUARY, 2017**

ORAL JUDGMENT :

1. The proceeding is filed to challenge the order made by learned Judicial Magistrate, First Class, Jalgaon on Exhibit 33 in S.C.C. No. 1521 of 2000 filed against present applicant for the offence punishable under Section 138 of the Negotiable Instruments Act. The application at Exhibit 33 was filed by present applicant for stay to the proceeding till decision of

civil suit filed by present respondent for the same cause of action. The Judicial Magistrate, First Class, Jalgaon has rejected the said application.

2. The submissions made show that two cheques were issued by present applicant. It is the case of applicant that he had signed cheques but the cheques were blank. It is the case of complainant that there was hand loan given and for repayment of hand loan, two cheques were given. Civil suit is filed for recovery of the amount. Attempt was made by present applicant to show to the civil Court that tampering was done with the two cheques and so cheques cannot be used. Submissions show that expert gave report that no definite opinion can be formed on the basis of the cheques sent to the expert. Submissions made show that applicant is attempting to prove that cheques were signed by applicant but contents were not filled in and no authority was given to the complainant to fill the contents. This submission is not acceptable in view of provisions of Section 20 of the Negotiable Instruments Act. It appears that even after receipt of report of aforesaid nature, one more attempt was made by present applicant in civil Court to get one more opinion and then application for stay was filed in criminal Court. Aforesaid circumstances show that the applicant somehow wants to protract the case.

3. In both the matters the provisions of Negotiable Instruments Act raising presumption can be used. Some procedure is given which is required to be followed for proving offence punishable under Section 138 of the Negotiable Instruments Act. The offence is required to be proved beyond the reasonable doubt and though civil case required to be proved on preponderance of probability. In view of nature of defence taken by present applicant, this Court holds that the criminal Court was not expected to stay the matter.

4. This Court holds that no error is committed by the Judicial Magistrate, First Class in rejecting the application. In the result, application stands disposed of as dismissed. Rule is discharged.

(T.V. NALAWADE, J.)

SSD