

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders

CRIMINAL APPLICATION NO.3384 OF 2016
WITH
CRIMINAL APPLICATION NO.3385/2016

DIPAK S/O BHASKAR RANE
VERSUS
MRS VASUNDHARA S/O NILKANTH CHOUDHARY
AND OTHERS

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Advocate for Applicant : Mr.C.T. Jadhav h/f
Mr.B.A. Chavan.

Advocate for Respondent No.1.: Talhar Ajay G.

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CORAM : V.L. ACHLIYA, J.
Dated: SEPTEMBER 06, 2017

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The applicants have preferred these applications u/s 482 of the Code of Criminal Procedure seeking quashing of proceedings of Criminal Complaint filed u/s 138 of the Negotiable Instruments Act, 1881.

2. In nutshell, it is the contention of the learned Counsel for the applicants that the cheque in question is shown to be issued on 16.9.2010 in the capacity as chairman of the credit co-operative society. By referring copy of appointment of Board of Directors and handing over charge on 1st

October, 2007, the learned Counsel submits that the applicants – accused ceased to be office bearer of the Jay Shree Ram Gramin Bigar Sheti Sahakari Pat Sanstha Maryadit. He further invited attention to letter dated 25.06.2008 issued by Assistant Registrar, Co-operative Society, Bhusawal addressed to the Administrator appointed to hand over charge to newly elected body. He submits that as the petitioner was no more working in the capacity of chairman or director of the said society, after the charge was handed over to the administrator on 1st October, 2007, there is no question of signing the cheque and issuing same to the complainant. He, therefore, submits that the cheque dated 16.09.2010 which is claimed to be issued by the applicants to complainant is not genuine and it is a created document by misusing the old blank cheques signed by the applicant. In this background, learned Counsel for applicants submits that the documents placed on record itself makes out a case that continuation of proceedings against applicants amounts to gross abuse of process of court of law and it is a fit case to invoke powers u/s 482 of the Code of Criminal Procedure. He further submits that since last three years, the applicant is suffering the rigors of prosecution without no progress in the case.

3. On the other hand, learned Counsel

representing respondent No.1 opposed the applications with contention that the veracity of allegations and genuineness of the document as relied in support of contention cannot be gone into while dealing with application filed u/s 482 of the Code of Criminal Procedure. He submits that the contention as raised being the defence of the accused same needs to be established before the trial Court. He further submits that the entire control of the credit co-operative society was with the applicant.

4. Having appreciated the submissions advanced, I am of the view that the contentions as raised by the learned Counsel requires consideration. However, the correctness of the factual aspect and genuineness of documents cannot be gone into in exercise of powers u/s 482 of the Code of Criminal Procedure. The documents as relied are not public documents, nor the documents can be termed as unquestioned documents. In the facts and circumstances of the case, it is desirable that the applicant may establish his defence before the trial Court. It is prime responsibility of the complainant to prove its case that the cheque in question was issued by accused in discharge of legal liability or debt as pleaded in complaint. The grievance of the applicant that he is suffering the rigors of trial from

last six years and the case is pending since last three years for evidence, can be well addressed by giving appropriate directions in the matter. In the result, the applications are dismissed. However, the trial Court is directed to expedite hearing of the case and decide the complaint within three months from the date of receipt of communication of the order passed by this Court.

4. It is clarified that the observations made as above are made for the limited purpose of deciding the applications and the same shall not be treated as observations made as to the merits of the case. The trial Court is directed to decide the case on its own merit without influenced by the observations made in this order.

5. The applications are disposed of in above terms.

(V.L. ACHLIYA,J)