

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

CRIMINAL APPLICATION NO. 5485 OF 2016

- 1) Manisha W/o Mahendra Deshmukh
Age : 45 years, Occ : Business,
R/o Sangvi (Benak), Tq. Mukhed,
Dist. Nanded
At present residing at
Vasant-Kunj, Sant Dnyaneshwar Nagar,
Latur.
- 2) Mahendra S/o Khanderao Deshmukh
Age : 50 years, Occ : Agri.,
R/o As above.
- 3) Rashmi Ramakant Deshmukh
Age : 47 years, Occ : Service,
R/o Sangvi (Benak), Tq. Mukhed,
Dist. Nanded.
- 4) Subhash Maruti Chabare
Age : 42 years, Occ : Agri.,
R/o As above.
- 5) Ambadas Vasantrao Deshmukh
Age : 45 years, Occ : Agri.,
R/o As above.
- 6) Premla Kishanrao Deshpande
Age : 46 years, Occ : Household,
R/o As above.
- 7) Maruti Manikrao Deshpande
Age : 55 years, Occ : Agri.,
R/o As above.

- 8) Kishanrao Yashwantrao Deshpande
Age : 52 years, Occ : Agri.,
R/o As above.

..APPLICANTS

-VERSUS-

- 1) The State of Maharashtra
Through Police Station Officer,
Police Station Latur (Gramin),
Dist. Latur
- 2) Dhanraj Ankushrao Mane
Age : 37 years, Occ : Business,
R/o LIC Colony, Baldava Nagar,
Ring Road, Latur,
Tq. & Dist. Latur.

..RESPONDENTS

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Advocate for applicants : Mr. Swapnil Rathi
APP for Respondent/State : Mr. P.G. Borade
Advocate for respondent No.2 : Mr. M.D. Gitte

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**CORAM : S.S. SHINDE &
K.K. SONAWANE, JJ.**

RESERVED ON : 6th April, 2017

PRONOUNCED ON : 11th April, 2017

JUDGMENT (S.S. SHINDE, J):-

Heard the learned counsel appearing for the applicants. He invites our attention to the allegations in the first information report and submits that, even if those allegations are taken at its face value and read in its entirety, the alleged offences are not disclosed. He further submits that,

there is nothing on record to show that, at any point of time, the said Sanstha has purchased the maize worth Rs.6,93,750/- from respondent no.2 – informant. He submits that, even if the allegations in the first information report are taken as it is, at the most, it can be said that, one of the member of the society/trustee has issued the cheque of Rs.6,93,750/- but without knowledge of other applicants. Other applicants are not looking day today affairs of the society. He submits that, the ingredients of Section 420 of the I.P. Code are not attracted. To attract the said provision, there should be averments in the first information report that, the accused since inception had intention to cheat the informant. He submits that, one of the accused though died, the informant stated in the first information report that, all the accused came in his house and requested to supply the maize and it shows that, the allegations in the first information report are false. In support of his contentions that, when the proceedings under Section 138 of the Negotiable Instruments Act for dishonour of cheque are already pending, the first information report for the alleged offences under Section

406/420 of the I.P. Code is not maintainable, the learned counsel appearing for applicants placed reliance on the exposition of law by the Supreme Court in the case of **G. Sagar Suri and another V/s State of U.P. and others**¹. He further invites our attention to the another judgment of the Supreme court in the case of **Monaben Ketanbhai Shah and another V/s State of Gujarat and others**² and submits that, in the facts of that case, it is held that, all the partners are not responsible for conduct of day today business of the firm.

2. On the other hand, the learned A.P.P. appearing for the respondent/State and the learned counsel appearing for respondent No.2, submit that, in the first information report itself, it is stated that, though the amount of Rs.6,93,750/- was not available in the account, so as to cheat and deceive the informant fraudulently the cheque was issued to the informant amounting to Rs.6,93,750/-. The learned A.P.P. invites our attention to the investigation papers and submits that, the statement of the concerned vehicle driver

1(2000) 2 SCC 636

2 AIR 2004 SC 4274

is recorded. He stated that, the maize was shifted from the house of the informant and it was unloaded in the office of the Society, and therefore, the receipt is also issued of supply of maize by the Secretary, Jaibhavani Gramvikas Bahoudheshiya Sevakbavi Sanstha, Sangvi(Benak), Tq. Mukhed, Dist. Nanded. He invites our attention to the Full Bench Judgment of Andhra Pradesh High Court in the case of **M/s OPTS Marketing Pvt. Ltd., and others V/s State of A.P., and others**³, and submits that, the view is taken in the said judgment that, even after introduction of Section 138 of the Negotiable Instruments Act, prosecution under section 420 of the I.P. Code is maintainable in case of dishonour of cheques or postdated cheques issued towards payment of price of the goods purchased or hand loan taken.

3. We have given careful consideration to the submissions advanced by the learned counsel appearing for the applicants, learned A.P.P. appearing for respondent/State and the learned counsel appearing for respondent no.2. We have carefully perused the allegations in the first information report.

3 2001 Cri.L.J. 1489

There are specific allegations in the first information report that, though the money/amount was not available in the account of the Sanstha, the cheque of Rs.6,93,750/- was issued in the name of respondent no.2 and it shows the intention of cheating by the applicants since inception. It is stated in the first information report that, all the applicants came to the house of the informant and requested him to supply the maize and accordingly, the informant has supplied the maize.

4. Perusal of the investigation papers prima facie shows the involvement of the applicants. The alleged offences are disclosed and those need investigation. Merely because, respondent no.2 has initiated the proceedings under section 138 of the Negotiable Instruments Act, after registering the first information report, is not a ground to quash the first information report. Hence the application stands rejected. However, this order will not preclude the applicants from availing of the appropriate remedy before appropriate Forum in the event of filing Report/Charge-sheet by the Investigating Officer. However, we make it

clear that, the observations made hereinbefore are prima facie in nature and confined to the adjudication of this application only.

(K.K. SONAWANE, J.)

(S.S. SHINDE, J.)

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