

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 391 OF 2017

S.M. Javeed Hussein

... Applicant

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. Manoj Mohite a/w Mr. Mubashir Hussein, a/w Saba Shikh i/b Hussein & Co.
for the Applicant.

Mrs. Rutuja Ambekar, APP for the Respondent/State.

Mr. Khan Fakruddin for Respondent Nos. 2 and 3.

CORAM : A.S.GADKARI, J.

DATE : 07th NOVEMBER, 2017

P.C.:

. This is an application under Section 482 of Cr.P.C. for quashing and setting aside the order dated 28.02.2017 passed by the Metropolitan Magistrate, 30th Court, Kurla, Mumbai below Exh. 1 in CC No.3002042/SS/2011, thereby clubbing CC No. 3002042/SS/2011 with MECR No. 12/2011.

2 Heard the learned Counsel for the Applicant, learned Counsel for the Respondent Nos. 2 and 3 at length and perused the record.

3 The facts giving rise to the present application can briefly be stated as under:-

i) The Applicant is a practicing Advocate and his services were engaged

by M/s. Immortal Infrastructure Pvt. Ltd., Respondent No.2 herein. That in pursuance to the services rendered by the Applicant for a period spanning for about 2 years, the Respondent No.2 Company issued a cheque bearing No. 0303336 dated 31.03.2011 for an amount of Rs.3,25,000/- towards his professional fees. The said cheque was dishonoured on presentation on 28.05.2011 and therefore, the Applicant after following due process of law filed a Complaint bearing CC No.3002042/SS/2011 under Section 138 of Negotiable Instruments Act before the learned Additional Chief Metropolitan Magistrate, Kurla, Mumbai on 05.08.2011. In the said case, till 06.02.2017, the recording of evidence and arguments of both the sides was completed and it was posted for judgment on 28.02.2017.

ii) That on 28.02.2017, the learned Magistrate after perusing the record, realised that the Respondent No.3 herein i.e. Mr. Shakoor Ahmed Jamaluddin Sayed has earlier filed a private complaint bearing No. 187/SW/11 for the offence allegedly under Sections 417, 420, 464, 465, 467 read with Section 34 of Indian Penal Code with an allegation that the document in question therein i.e. the declaration dated 17.12.2010 is forged and fabricated. That the concerned Magistrate has passed an order dated 30.08.2011 under Section 156(3) of Cr.P.C. directing the concerned Police Station to investigate into the matter. After receipt of the said order under Section 156(3), the Oshiwara Police Station has lodged MECR No. 12/2011 in that behalf. Feeling aggrieved by the

said order under Section 156(3) and lodgment of first information report, the Applicant herein alongwith other persons has preferred Criminal Application No. 1359 of 2011 in this Court for quashing and the Division Bench of this Court has admitted it by an Order dated 4.10.2012 and is pending for final adjudication.

iii) As stated earlier, the learned Magistrate at the time of pronouncement of judgment on 28.02.2017 realised that, the said Crime No. 12/2011 for offence punishable under Sections 465, 467, 417 and 420 read with Section 34 of the Indian Penal Code, is pending on the file of Metropolitan Magistrate, Andheri and the Criminal Application No. 1359 of 2011 filed by the Applicant is also pending before the High Court and therefore, passed an order to transfer the said CC No.3002042/SS/2011 to the learned Metropolitan Magistrate, Andheri for trying/disposing of both the cases together. The said Order is impugned herein.

4 Learned Counsel for the Respondent Nos. 2 and 3 justified the impugned Order by taking me through the cross-examination of Applicant and examination-in-chief of Respondent No.3 in C.C. No.3002042/SS/2011. He submitted that the Applicant herein has drafted the said alleged Deed of Declaration dated 17.12.2010, which is annexed at page No. 161 of the present application. He submitted that Respondent No. 3 has made a categorical allegation against the co-accused namely Mr. Tajuddin Mujahid in his complaint that the said Tajuddin Mujahid was the authorised signatory of the Respondent No.3 and his wife and

has fabricated the said Deed of Declaration dated 17.12.2010 and on the basis of the said categorical allegation in complaint, the learned Metropolitan Magistrate passed an Order under Section 156(3) of Cr.P.C. He submitted that the cheques which were duly signed by the Respondent No.3 were in possession of the accused No.1 Tajuddin Mujahid and the said Tajuddin Mujahid in connivance of the present Applicant has subsequently filed the present complaint under Section 138 of the Negotiable Instruments Act. He further submitted that there is inter-relation between the case filed by the Applicant under Section 138 of the Negotiable Instruments Act and the private complaint filed by Respondent No.3 bearing No. 187/SW/2011 (CR No. 12/2011). That the said two are cross cases and therefore, the Order passed by the Magistrate under Section 210 of Cr.P.C. is legally correct Order. He therefore, prayed that the present application may be accordingly dismissed.

5 A bare perusal of the record indicates that the Applicant herein has instituted the aforesaid complaint bearing No.3002042/SS/2011 under Section 138 of Negotiable Instruments Act specifically on the ground that Respondent Nos. 2 and 3 herein have issued the said cheque in question therein to him towards his professional fees which was dishonoured on its presentation. As stated earlier, the said cheque was dishonoured on 28.05.2011 and the Respondent No.3 being alleged Director of Respondent No.2 has filed the said private complaint bearing No. 187/SW/2011 on 10.06.2011 i.e. after dishonour

of the said negotiable instrument in question. After perusing the evidence of applicant in the said complaint i.e. CC No. 3002042/SS/2011, except putting certain leading questions to the Applicant herein, the Respondent No.3 is unsuccessful in bringing on record that, the case instituted by the Applicant and the case instituted by the Respondent No.3 are cross cases. It cannot be even remotely inferred that the said two cases are interlinked and are cross cases. The case bearing No. 3002042/SS/2011 is under Section 138 of Negotiable Instruments Act, wherein under Section 139 there is a presumption which can be rebutted by Respondent No.3 by leading substantial evidence. It is further to be noted here that after the impugned Order is passed suo motu by the learned Magistrate, the Respondent Nos. 2 and 3 are now trying to justify it by lengthy arguments. It is to be further noted here that, the record is silent about filing of final report by the Police in the said MECR No.12 of 2011 registered with Oshiwara Police Station. I am of the considered view that the case instituted by the Applicant has no concern and/or inter-relation with the case instituted by the Respondent No.3 against his co-director where the Applicant herein has also been arraigned as a Respondent/Accused. It further appears to me that the Applicant being an Advocate who has allegedly drafted the said Deed of Declaration dated 17.12.2010 is being unnecessarily harassed by the Respondent Nos. 2 and 3 herein and more particularly by Respondent No.3 to settle his scores with the other Director of the company.

6 As noted earlier, the learned Magistrate had proceeded with the said case bearing C.C.No.3002042/SS/2011 up to the stage of pronouncement of judgment and in the complaint/case instituted by the Respondent No.3 No. 187/SW/2011 (C.R. No. 12/2011), the police are yet to file final report. It is also to be noted here that unless and until the police submits final report in a case instituted by the Respondent No.3 against its co-director, the evidence in his case cannot be said to have been crystallized to support the allegation made by the Respondent No.3 against the Applicant.

7 In view of the above, this Court is of the considered view that the learned Magistrate has clearly erred in passing the impugned order and it needs to be interfered with.

Hence, the following order:

- i) The application is allowed in terms of prayer clauses (a) and (b).
- ii) The learned Metropolitan Magistrate, 30th Court, Kurla, Mumbai is hereby directed to pronounce the judgment pertaining to CC No.3002042/SS/2011 within a period of two weeks from the date of receipt of this Order.
- iii) All the concerned to act on an authenticated copy of this order.

8 At this stage, the learned Counsel for the Respondent Nos. 2 and 3 seeks stay to the operation and implementation of the present order.

After taking into consideration the facts mentioned hereinabove, the said prayer is rejected.

(A.S.GADKARI, J.)