

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO. 938 OF 2016

Awdheshnarayan Ramadhar Upadhyay Vs. The State of Maharashtra & Ors.

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

Court's or Judge's orders

Mr. Sanjay Shinde for Applicant.
Mr. S.D. Shinde for Respondent Nos. 2 & 3.
Ms. A.A. Takalkar, APP for State.

CORAM : A.S. GADKARI, J.

DATE : 11th September 2017.

P.C.:

1] The present application under Section 482 of Cr. P.C is filed for quashing of complaint in Criminal Summary Case No.86 of 2016 pending before the Judicial Magistrate, First Class, Pimpalgaon Baswant, Taluka-Niphad, District-Nashik

2] Heard learned Counsel for respective parties and learned APP for State.

3] The record indicates that the respondent No.3 has filed the said complaint under Section 138 read with 142 of the Negotiable Instruments Act for dishonour of a cheque bearing No.021564 amounting to Rs.35.00 lakhs.

4] Learned Counsel for the applicant submitted that, as a matter of fact, the applicant had already paid Rs.30.00 lakhs to the respondent No.3 before issuance of notice under Section 138 of the Negotiable Instruments Act and therefore the proceeding initiated by the respondent No.3 against the applicant is with malafide intention. He submitted that the said cheque was deposited with the respondent No.3 as a security and respondent No.3 was not suppose to deposit it unless and until the applicant instructs him to do so.

5] After perusing the record, it appears that the complainant has made out a offence under Section 138 r/w 142 of the Negotiable Instruments Act against the applicant. At this stage, there is no reason to disbelieve the statements made by the respondent No.3 in his complaint. The record further indicates that the said cheque was dishonoured on its presentation which clearly attracts the provision of Section 138 of Negotiable Instruments Act.

6] In view thereof, this Court is of the view that a prima facie case is made out by the respondent No.3 against the applicant.

Application is accordingly rejected.

(A.S. GADKARI, J.)