

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

WRIT PETITION NO. 4224 OF 2013

Amit Anant Limkar

... Petitioner

vs.

The State of Maharashtra & anr.

... Respondents

Mr. Abhaykumar Apte, Advocate for the petitioner.

Mr. S. R. Agarkar, A.P.P. for the State/respondent no.1.

Mr. Amol A. Deshpande, Advocate for respondent no.2.

Coram : Smt. R. P. SondurBaldota, J.

Date : 9th January, 2017

P.C. :

1. This petition challenges the order dated 7th September, 2014 passed by the trial Court issuing process against the petitioner for the offence punishable under Sections 409 and 379 of Indian Penal Code ('I.P.C.', for short). According to the petitioner the offence punishable under Section 409 of I.P.C. cannot be attracted to the facts of the case since the petitioner was not an agent of respondent no.2 and that he was merely working with her.

2. The facts of the case stated in brief are that, out of personal relations between families of both the sides the petitioner was employed with respondent no.2 as an Assistant in her business of manufacture of Solar Systems. The husband of respondent no.2 had imparted the technical knowledge to him

and employed him as an Assistant on 2nd May, 2002 on monthly salary of Rs.8,000/-. Respondent no.2 had also, at the request of petitioner and his father, advanced loan of Rs.25,000/- to the father of petitioner on 4th July, 2002. The loan which was given by cheque was to be repaid in July, 2003. It was a specific case of respondent no.2 that because she was required to be away from the place of business for a substantially part of day on account of her small child, she used to by way of convenience keep her signed blank cheques in a particular place in the office to which the petitioner had an access. The cheques were to be used as and when required in the absence of respondent no.2. During the course of Diwali vacation i.e. 21st October, 2003 to 28th October, 2003, when the office was closed, the petitioner allegedly visited the office premises, opened the same with the keys in his possession and took away four signed cheques. Two of the cheques were blank and two were in the name of the suppliers of respondent no.2. The petitioner deposited the blank cheques in his own account. The same were dishonoured because of the "Stop Payment" instructions issued by respondent no.2 after realization that the cheques had been missing. Thereafter the complaint herein was filed as a private complaint by respondent no.2. The petitioner has also filed proceedings under Section 138 of Negotiable Instruments Act against respondent no.2.

3. The evidence of respondent no.2 in verification, prima facie, makes out the case against the petitioner. Mr. Apte, the learned advocate for the petitioner however submits that the petitioner was never an agent of respondent no.2 therefore the process for the offence punishable under Section 409 could not

have been issued by the trial Court. He submits that the petitioner was a mere employee of respondent no.2. This argument would amount to the defence of the petitioner, which has required to be established during cross-examination of respondent no.2 at the time of trial. In the circumstance, there is no merit in the petition. Hence, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]