

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.370 OF 2018

(ASHISH VASANT DEOGHARE & ANR...VS.. VITTHALRAO FAKIRJI MANKAR)

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

Court's or Judge's orders

Ms R.D.Raskar, Advocate for Petitioner.
Shri D.R.Rupnarayan, Advocate for Respondent.

CORAM : Z.A.HAQ, J.

DATED : OCTOBER 29, 2018.

Heard.

The original accused takes exception to the order passed by the learned Magistrate directing issuance of process against them for the offence punishable under Section 403 read with Section 34 of the Indian Penal Code. The petitioners have also challenged the order passed by the Sessions Court by which the revision filed by the accused is dismissed.

The submission on behalf of the petitioners is that the learned Magistrate has not examined the evidence brought on record by the complainant in the right perspective and has committed an error of jurisdiction by directing issuance of process against the petitioners/accused. It is submitted that even according to the respondent-complainant, the cheque book was taken by the accused from the complainant's banker on 9th October 2004 and it is used in 2008. There is no explanation by the complainant as to why he has not taken any action immediately after 9th October 2004 and why the complaint is filed after a considerable time in 2009. It is further argued that the learned Sessions Judge

has not considered the material independently and without application of mind and adopting the reasons recorded by the learned Magistrate, the revision application is dismissed.

The learned advocate for the respondent/ complainant has pointed out that the complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “the Act of 1881”) was filed by the respondent/ complainant against the father of the petitioners/ accused and another complaint under Section 138 of the Act of 1881 (Summary Criminal Case No. 416/2008) was filed by the respondent/ complainant against the present petitioner/ accused No.2. It is pointed out that the facts and evidence which have come on record in the above referred two proceedings, *prima-facie* substantiate the claim of the present respondent/ complainant that the present petitioners / accused had obtained cheque book of the complainant from his banker on 9th October 2004 and misused it in 2008.

The advocate for the petitioner has submitted that the judgment passed in the above referred two proceedings are challenged before this Court and the appeal with prayer for grant of leave to file appeal is pending.

Be that as it may, I find that there is *prima-facie* material on record which is rightly considered by the learned Magistrate and the learned Magistrate has not committed any error in directing issuance of process against the petitioners/ accused. Further, I do not find any patent illegality or jurisdictional error which necessitates interference by this Court in the extraordinary jurisdiction. I see no reason to interfere in the matter.

The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

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