

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

CRIMINAL APPLICATION NO.1129/2018

Dashmesh Road Construction Private Ltd. and another

..Vs..

The State of Maharashtra and another

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

Court's or Judge's orders

Shri R.B. Raghuvarshi Advocate with Shri B.N. Jaipurkar, Advocate for
the applicants.

Shri V.P. Maldhure, A.P.P. for non-applicant No.1.

CORAM : Z.A. HAQ, J.

DATE : 26.11.2018.

Accepting the statement given in the application, the order passed by this Court on 5th June, 2018 dismissing the Criminal Application No.1065/2010 in default is **recalled**. The Criminal Application No.1065/2010 is **restored**. Criminal Application No.1129/2018 is **allowed** accordingly.

CRIMINAL APPLICATION NO.1065/2010

Though the non-applicant No.2 (original complainant) is not served, considering the fact that the applicant / accused has challenged the order passed by the learned Magistrate on 31st January, 2009 directing the issuance of process against the applicant / accused and the fact that this criminal application is pending since 2010, I have examined the facts of the case with the assistance of the learned Advocate for the applicant and the learned A.P.P. I find that the learned Magistrate

has made the necessary enquiry before coming to the conclusion that process for prosecution for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 is required to be issued against the accused. The accused had filed revision application before the Sessions Court which is also dismissed. According to the accused, before taking cognizance the learned Magistrate should have examined the documents on record specially the memorandum of understanding between the parties which show that the cheque on the basis of which complaint is filed by the non-applicant No.2 was given as security and it was not given to discharge legally enforceable debt / liability. According to the accused, the complainant should not have presented the cheque to the bank for encashment as there was an understanding between the complainant and the accused to that effect.

After considering the contentions of the accused, I am of the view that the issues sought to be raised by the accused cannot be considered at the stage of issuing process and the same will have to be considered after evidence is recorded in the trial. The learned Sessions Judge has examined all the relevant aspects properly and has rightly refused to interfere with the order passed by the learned Magistrate directing issuance of process against the accused. Concurring with the findings recorded by the learned Sessions Judge, I refuse to interfere with the impugned order passed by the learned Magistrate. The Criminal application is

dismissed.

The applicants / accused shall appear before the trial Court on the date on which the matter is already fixed.

At this stage, the learned Advocate for the applicants / accused pray that considering the age of the applicants they be granted exemption from personal appearance at the routine dates and they undertake to appear before the learned Magistrate whenever directions to that effect would be given by the learned Magistrate. The above submission is accepted and the applicants / accused are granted exemption from appearing on the routine dates. The applicants / accused shall attend the proceedings whenever directed by the learned Magistrate. This order is passed on the assurance given on behalf of the applicants / accused that their Advocate will not seek adjournment on the ground of non-availability of the applicants / accused.

JUDGE