

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 869 OF 2018

Shivaji S/o Sukhdev Pawar,
Age – 50 years, Occu- Service,
R/o– Plot No.53, Gut No 95/2,
Kusumkunj Peshve Nagar,
Sataraparisar,
Tal/Dist– Aurangabad.

... PETITIONER

VERSUS

- 1] The State of Maharashtra.
- 2] The Police Station Incharge
Jawahar Nagar Police Station,
Taluka and Dist– Aurangabad.
- 3] Sho. Savita W/o Vishawas Patil,
Age 30 years, Occ : Business,
R/o Plot No.04, Uadoyg Shilp
Appartment, Garkheda Parisar,
Taq & Dist– Aurangabad.

... RESPONDENTS

...
Mr. M. R. Khutwad, Advocate for Petitioner.

Mr. K. S. Patil, APP for Respondent No.1 & 2.

Mr. P. P. Kalaskar, Advocate for Respondent No. 3.

...

CORAM : T. V. NALAWADE, J.

DATE : 25th June, 2019.

ORAL JUDGMENT:

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The proceeding is filed to challenge the order made by the learned Judicial Magistrate First Class, Aurangabad in Regular Criminal Case No.1302 of 2017. The application for discharge was filed before the learned Judicial Magistrate First Class in the case filed for the offences punishable under Sections 420 and 406 of the Indian Penal Code. The learned Judicial Magistrate First Class has rejected the application. The Sessions Court has dismissed the revision filed by the present Petitioner bearing Criminal Revision Application No.143 of 2018 and so both the decisions are challenged.

3 The submissions made and record show that the Petitioner had filed Regular Civil Suit No.661 of 2016 against the first informant, Smt. Savita Patil on 5th August, 2016 for recovery of amount, which was given as hand loan. By the decision dated 14th May, 2019, the Civil Court gave decree of Rs.1,92,000/- and interest

is also allowed at the rate of 18% per annum on this amount. A copy of judgment produced shows that present Respondent No.3 (Savita) had appeared in the suit and she had taken defence that there was a transaction between her and the present Petitioner and under the transaction, one water purifier worth Rs.3,12,040/- was supplied by her to the Petitioner. She contended that the said transaction took place on 22nd March, 2015 and out of the total consideration, an amount of Rs.2,22,000/- was given by the present Petitioner and he was in dues of Rs.90,000/-. In the suit, she had prayed for giving decree in respect of the amount of Rs.90,000/-. Counter claim was made by her. Said counter claim is considered by the Civil Court and it is dismissed.

4 The submissions made and record show that on one hand it is contended that there was transaction of civil nature and the Petitioner was in dues of Rs.90,000/- and the transaction had taken place in the year 2015, but not steps were taken like giving report against the Petitioner and only after filing of the suit for recovery, report was given to police. In FIR itself, it is mentioned that the present Petitioner was known to the husband of first informant and

due to that the transaction of sale of water purifier had taken place.

5 Allegations made in the FIR do not show that right from the beginning there was intention to deceive. Thus, even if there was such transaction, it can be said that the transaction was of civil nature and there was no criminal intention. Further, relief in respect of aforesaid amount said to be due from the Petitioner, is rejected by the Civil Court. In view of these circumstances, this Court holds that it is not possible to prove the offence of cheating etc. as alleged in the FIR as against the Petitioner. Though the judgment of Civil Court was not available before the learned Judicial Magistrate First Class as judgment was delivered on 14th May, 2019, there was circumstances as mentioned in the FIR on the basis of which it could have been presumed that it was a dispute of civil nature. This Court holds that it is not desirable to ask the Petitioner to face the trial for such offence. In the result, the following order is passed:

ORDER

- I. The petition is allowed.
- II. The orders made by the learned Judicial

Magistrate First Class, Aurangabad and the learned Additional Sessions Judge, Aurangabad against the Petitioner are hereby set aside.

III. The application filed for discharge is hereby allowed.

IV. The Petitioner stands discharged in respect of the offences for which charge-sheet was filed in the Court of learned Judicial Magistrate First Class, Aurangabad.

V. Rule is made absolute in those terms.

[T. V. NALAWADE, J.]

ndm