**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.3707 OF 2008

Hemant s/o Haribhau Alhat
Age 39 years, Occu:Business,
R/o Brahman Ali,Rajgurunagar,
Tq.Khed Dist.Pune. .. APPLICANT

VERSUS

1] M/s. Riddhi Infrastructures Pvt.Ltd.
Hall C-1, Bhikamchand Jain Market
Jalgaon through Vinayak Deorao Choudhary,
Age 62 years, Occu:Business,
R/o Jalgaon. .. RESPONDENTS
[Orig.Complainant]

2] The State of Maharashtra

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Shri S.V.Warad,Advocate for applicant
None for respondent no.1 though served.
Shri P.K.Lakhotia, APP for respondent No.2 State.

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**CORAM : MANGESH S. PATIL, J.
RESERVED ON 26/08/2019
PRONOUNCED ON :04/09/2019**

JUDGMENT :

In this application under Section 482 of the Criminal Procedure Code, the applicant is praying for quashment and setting aside the proceeding of Criminal Case bearing S.C.C.No.5447 of 2006 pending in the Court of Chief Judicial Magistrate, Jalgaon for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the N.I.Act) initiated by the respondent no.1.

2] Briefly stated the allegations in the complaint filed by the respondent no.1 are to the effect that the present applicant is a Government Contractor and was appointed as a Contractor to implement the Water Supply Scheme in village Kiwale floated by the Gram Panchayat. He thereafter entered into an agreement with respondent no.1 and the latter was engaged by him to complete the work. However, a dispute arose midway and the project could not be completed. According to the respondent no.1, applicant had issued Cheque No.61704 towards satisfaction of the dues arising out of that transaction for an amount of Rs.8,38,519/- drawn on Shree Mahavir Sahakari Bank Ltd. Branch Jalgaon dated 30/4/2006. When it presented the cheque for encashment, it was returned by the bank on 18/9/2006 due to insufficiency of funds. It therefore, sent him notice dated 11/10/2006 and demanded the money of the cheque. He received the notice on 14/10/2006 but instead of making any compliance he sent a false reply. Since he failed to pay the amount mentioned in the cheque within 15 days, the complaint was filed on 18/11/2006. The learned Magistrate after examining the complainant who was the person authorised by the respondent no.1 company directed the process to be issued for the offence punishable under Section 138 of the N.I. Act. Hence this application.

3] The learned advocate for the applicant vehemently submitted that it was purely a civil dispute arising out of alleged breach of contract between the parties. Pursuant to such arrangement as evidenced by the agreement, he was made to open an account and blank signed cheques were obtained from him. After the dispute arose, one such cheque has been misused. There was apparently no legally enforceable debt against which the cheque was issued.

4] The respondent no.1 was duly served with the notice for final hearing but nobody turned up and could be heard on its behalf.

5] As far as the compliance with the statutory time line laid down under Section 138 of the N.I. Act is concerned, apparently there cannot be *prima facie* any dispute. The cheque was presented within its validity period. It was dishonoured due to insufficiency of funds. The notice was issued demanding the amount of the cheque by intimating its dishonour within 30 days after receipt of the information from the bank. The applicant has failed to pay the amount of the cheque within 15 days and the complaint has been filed within 1 month thereafter. Therefore, as far as such technicality is concerned, at this juncture one cannot but subscribe to the observations and conclusions of the learned Magistrate while directing the process to be issued, wherein he has specifically mentioned that such a time line has been duly followed as is laid down under Section 138 of the N.I. Act.

6] The learned advocate for the applicant adverted my attention to the copy of the agreement dated 21/7/2005 entered into between the applicant and the respondent no.1 pointing out that there is a condition to approach the Arbitrator for resolution of any dispute between the parties. He also pointed out the copy of the Minutes of the meeting of the Gram Panchayat, Kiwale, wherein apart from the other members, the applicant and the representatives of the respondent no.1 were present wherein the latter refused to complete the work and it was resolved that the remainder of the work would be completed by the applicant. The learned advocate also pointed out as to how applicant was required to serve respondent no.1 with a legal notice through his advocate on 5/5/2006, as to how he had asked the banker by his letter dated 2/5/2006 to stop payment and also adverted my attention to reply of the respondent no.1 to his counter reply and further correspondence. The learned advocate strenuously attempted to point out that such correspondence would clearly demonstrate that it is purely a civil dispute and the respondent no.1 has taken disadvantage of the blank and signed cheque available with it and allowing such a complaint to be prosecuted, would be a sheer misuse of the process of the Court which should not be allowed.

7] No doubt, apparently it is purely a business transaction which was entered into between the two sides and obviously there would be a dispute between the two which would be of civil nature. However, merely because the parties also are engaged in some kind of civil dispute independently, at this juncture one cannot brush aside the criminality involved in the form of the dishonour of the cheque creating criminal liability under Section 138 of the N.I. Act. Whether the cheque was issued in discharge of a legally enforceable debt, can only be gone into during the trial. There are several presumptions under Sections 118 and 139 the N.I. Act, operating in favour of the respondent no.1. It cannot be said that prosecuting such a complaint is a misuse of the process of law. The civil dispute would take its own course for its resolution. However, that cannot be used to stall the process of the criminal law.

8] The learned advocate for the applicant then submitted that the complaint has been filed by one Mr.Choudhari for and on behalf of the respondent no.1 company, when he has no role to play in the matter and is not a payee.

9] Perusal of the cheque shows that it has been issued in the name of the respondent no.1 company which would be the payee. It is only because it is a legal entity, the Directors by the Resolution dated 1/9/2006 seem to have authorised Mr.Choudhari to lodge the complaint for and on its behalf. A true copy of the Resolution is also annexed with the complaint. Therefore, there is no substance in the submission of the learned advocate raising objection on this count as well.

10] In the result, there is no substance in the application, which in fact has protracted the trial for last so many years. The Application is rejected. Rule is discharged. Interim relief stands vacated.

11] The Record and Proceedings be sent back immediately. The learned trial Judge shall endeavour to conclude the trial as expeditiously as possible.

(MANGESH S. PATIL,J.)

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At this juncture the learned advocate for the applicant submits that the trial has been stayed by way of *ad interim* relief since the year 2008 which is in operation till date and that arrangement may be continued so as to enable the applicant to challenge the order.

2] True it is that by way of *ad interim* relief the trial has been stayed. However as is noticed and specifically mentioned in the judgment pronounced just now, I find no justifiable and sufficient reason to allow the trail to be protracted hereinafter at least. The request is rejected.

[MANGESH S. PATIL,J.]

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