

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

CRIMINAL WRIT PETITION NO. 1129 OF 2019

Shobhabai w/o Sahebrao Waghchaure,
Age 70 years, Occ. Agriculture,
R/o. Itawa, Tq. Gangapur, Dist. Aurangabad,
At Present A-2/48, Gajanan Nagar,
Garkheda Parisar, Aurangabad. ... **Petitioner.**

VERSUS

- 1) Manoj s/o Baburao Admane,
Age 39 years, Occ. Business,
R/o. "Saket", Plot No. 47,
Venkatesh Nagar, Aurangabad,
Tq. & Dist. Aurangabad.
- 2) The State of Maharashtra. ... **Respondents.**

...

Advocate for the petitioner : Mr. Sonwane Mahesh R.
Advocate for the respondent No. 1 : Mr. A.M.Gholap.
APP for the respondent No. 2/State : Mr. B.V. Virdhe.

CORAM : MANGESH S. PATIL, J.

DATE : 25/09/2019

ORAL JUDGMENT :

Heard. Rule. The rule is made returnable forthwith. With the consent of both the sides the matter is heard finally.

2. The case presents interesting facts.
3. In an appeal against conviction for the offence punishable

under section 138 of the Negotiable Instruments Act, the learned Sessions Judge apparently over-zealously embarked upon the arena in which he should not have entered into. Instead of deciding the appeal on merits he seems to have swayed away by some offer by the accused to make the payment provided the property purchased by him was identified. By the impugned order the learned Sessions Judge appointed Deputy Superintendent of Land Records as a Commissioner and directed him to measure the land.

4. The learned advocate for the respondent-accused submits that by virtue of the provision of Section 386(e), Section 391(4) and Section 19 of the Code of Criminal Procedure, perhaps, the learned Sessions Judge has passed the order.

5. Without indulging in the discussion it would be suffice to observe that the Code of Criminal Procedure does not admit of any such power in the Appellate Court in an appeal against conviction for the offence punishable under section 138 of the Negotiable Instruments Act to direct appointment of a Court Commissioner to measure land, although the cheque in question is purportedly issued as a consideration for purchasing it. The learned Sessions Judge has committed a gross error in indulging in such a procedure which is alien to the Code of Criminal Procedure.

6. The observations of my predecessor in the order dated 06.08.2019 are indeed sufficient and clearly justify why he was shocked and surprised.

7. The impugned order cannot stand the legal scrutiny and is liable to be quashed and set aside.

8. The Writ Petition is allowed. The impugned order is quashed and set aside. The rule is accordingly made absolute.

(MANGESH S. PATIL, J.)

mkd