

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

914 CRIMINAL WRIT PETITION NO.623 OF 2020

**MANOJKUMAR OMPRAKSH SONI
VERSUS
SAVARMAL RAMNIWAS PASARI**

...

Advocate for Petitioner : Mr. Savale Amit S.

**CORAM : MANGESH S. PATIL, J.
DATE : 04.02.2021.**

PER COURT :

Heard the learned advocate for the petitioner.

2. The petitioner who is an accused in S.T.C.C. No. 3015/2018 pending on the file of the Judicial Magistrate, First Class at Dhule for the offence punishable under Section 138 of the Negotiable Instruments Act, on a complaint filed by the respondent, is seeking its quashment by invoking the powers of this Court under Section 482 of the Code of Criminal Procedure.

3. The learned advocate for the petitioner would submit that the petitioner acted as a general power of attorney of the respondent. The property for which the power of attorney is stated to have been executed was owned by nine different persons. Initially the petitioner was made to believe that even the respondent has right and interest in that property as a legal heir of the original owner and even he would be entitled to some share in the consideration that was to be received by selling the property. Accordingly the respondent executed the power of attorney in favour of the petitioner and in lieu there of the latter issued the cheque in question. An amount of Rs. 50,000/- was also

transmitted by the petitioner in the account of the respondent by RTGS. The petitioner was not allowed to execute the sale-deed on behalf of the respondent as the latter's name was not appearing in the property card of the property. On verification the petitioner found that the respondent was not entitled to get any share in the sale proceeds and therefore he issued instructions to his banker to stop payment under the cheque.

4. The learned advocate would then submit that realizing that the respondent has practised fraud on him he lodged F.I.R. No. 121/2019 at Laxmangarh Police Station, District Sikar (Rajasthan) for the offences punishable under Sections 420, 467, 468, 471 read with Section 120B of the Indian Penal Code. The complaint under Section 138 of the Negotiable Instruments Act has been lodged by the respondent with an ulterior motive and as an after thought. When there is no record demonstrating respondent's share in the property to be sold, it cannot be said that the cheque in question was issued towards any legally enforceable debt.

5. I have carefully considered the submissions of the learned advocate and perused the record. It needs to be reminded that the petitioner is seeking quashment of a proceeding under Section 138 of the Negotiable Instruments Act by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure. Once it is kept in mind, it is quite apparent that there are several disputed questions of facts which will have to be gone into and which can be decided at a full fledged trial and not in this proceeding.

6. Going by the submissions of the learned advocate for the petitioner and the stand being taken by him in this proceeding, he

prima facie does not dispute issuance of the cheque towards payment of a legally enforceable debt which accrued pursuant to the execution of the power of attorney by the respondent and its acceptance by him. He is also not disputing his signature on the cheque and he having instructed to stop payment under it.

7. Pertinently, the petitioner is also not denying about the respondent having followed the necessary prerequisites for institution of a complaint under Section 138 of the Negotiable Instruments Act. The cheque was presented within its validity period. When it was dishonoured he issued a notice to the petitioner within stipulated time and has filed the complaint within limitation as prescribed under the provisions of the Negotiable Instruments Act.

8. It is important to note that going by the record of the Lower Court, copies of which are produced in this proceeding, the statutory notice was sent by registered post and it was returned unclaimed. In spite of such state of affairs, the petitioner is not denying about having received the notice or to have declined/refused to receive it. Whatever may be the case, apparently the petitioner has not given any reply to the statutory notice. It was the first opportunity at which he should have taken some stand in conformity with his stand in the present proceeding.

9. It is further to be noted that to begin with there is a statutory presumption in favour of the respondent under Section 139 of the Negotiable Instruments Act which requires a presumption to be drawn about the cheque having been issued for discharge of a debt or liability and the burden is on the petitioner to dislodge the presumption. Needless to state that he can do so only during trial and not in a

proceeding seeking its quashment like the present one.

10. In view of such a state of affairs, in my considered view there is absolutely no merit in the present proceeding which is liable to be dismissed. It would be a sheer misuse of the process of Court if an accused in a proceeding under Section 138 of the Negotiable Instruments Act like the present petitioner seeks to quash it without there being denial of all the necessary ingredients which collectively constitute the offence punishable under Section 138 of the Negotiable Instruments Act.

11. The Writ Petition is dismissed in limine.

12. Observations made herein are confined to the present proceeding.

(MANGESH S. PATIL, J.)

mkd/-