

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 13 OF 2021

Danish Naseem Qureshi	...Applicant
Versus	
State of Maharashtra and Anr.	...Respondents

Mr. M.A. Adenwala for the Applicant.

Ms. S.V.Sonawane, A.P.P for the Respondent No.1-State.

Mr. Satish Muley a/w Mr. Sajid Qureshi for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.
DATE : 17th MARCH, 2021

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicant has impugned the order dated 23/10/2020 passed by the learned Metropolitan Magistrate, 14th Court, Girgaon, Mumbai below Exh.19 in C.C.No.1408/SS/2019, by which the applicant was directed to pay 20% of the amount of subject cheque as interim compensation to the respondent No.2 (original complainant), within 60 days from the date of order.

3. Learned Counsel for the applicant submits that there was no justification for the learned Judge to direct the applicant to deposit the said interim compensation, inasmuch as, the transaction was not a commercial transaction. He submitted that the respondent No.2's parents under coercion and threat obtained a blank cheque from the applicant and that the same was subsequently filled in by them. He further submitted that the applicant had sent a complaint letter dated 19/12/2018 to the Commissioner of Police and Station House Officer, Nagpada Police Station for registering an FIR as against Respondent No.2's uncle and father, alleging criminal intimidation and threat to his (applicant) life and threat to business and profession.

4. Learned Counsel for the applicant relied on the judgment of the Apex Court in the case of ***Makwana Mangaldas Tulsidas V/s. State of Gujarat and Anr.¹ and K.S.Rajan V/s. V. Siththarthan²*** of the Madras High Court.

5. Learned Counsel for the respondent No.2 opposed the application. He submitted that no interference is warranted in the impugned order dated 23/10/2020, directing the applicant to pay 20% of

¹ SLP Criminal 5464/2016 Dtd.05/03/2020

² Cri.O.P.(MD) Nos.1991 & 1992/2020 Dtd.05/03/2020

the subject cheque as interim compensation to the respondent No.2. He submits that the Trial Court has passed the said order, after considering the merits of the case. He further submitted that the details of the cheque which was dishonoured has been mentioned in the mutual divorce by way of Mubarat (by way of Deed of Mutual Divorce) executed between the applicant and the respondent No.2-wife. He submits that the said deed was executed in 2019, whereas, the complaint filed by the applicant was in December, 2018 as against the uncle and the father of respondent No.2; and that there is no connection between the two.

6. Perused the papers. On an application filed by the respondent No.2 for interim compensation under Section 143-A of the Negotiable Instruments Act, the learned Magistrate directed the applicant to pay 20% of the subject cheque as interim compensation to the respondent No.2. It is pertinent to note that the applicant and the respondent No.2 are husband and wife. A perusal of clause (3) of the mutual divorce by way of Mubarat (Deed of Mutual Divorce) which is at 'annexure G' on page No.44 of the application shows, that the parties amicably settled their matrimonial dispute i.e. the parties exchanged their articles, utensils, jewelleryes, gold ornaments and other belongings with each other and that the respondent No.2 received an amount of Rs.19,50,000/- vide cheque No. 001055, which

includes the 'Mehr' amount. The details of the cheque (now dishonoured) is handwritten and in the margin, both i.e. the applicant as well as respondent No.2, have put their signatures. It is this cheque, given to the respondent No.2 pursuant to the mutual divorce by way of Mubarat, which is dishonoured, pursuant to which, the respondent No.2 - wife filed a complaint, as against the applicant alleging an offence punishable under Section 138 of the Negotiable Instruments Act. The complaint (letter) lodged by the applicant on 19/12/2018 which is at 'annexure M' at page No.67 shows that the said complaint is against respondent No.2's uncle and his father. There is no mention of any cheque in the said complaint, as alleged that it was taken under duress by respondent No.2's parents. Having perused the impugned order, the same being a discretionary relief, no interference is warranted in the same. The judgments relied upon by the learned Counsel for the applicant are clearly distinguishable and have no bearing in the facts.

7. Considering the aforesaid, application stands rejected.

REVATI MOHITE DERE, J.