

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.121 OF 2014

A/W

CRIMINAL REVISION APPLICATION NO.122 OF 2014

A/W

CRIMINAL REVISION APPLICATION NO.123 OF 2014

A/W

CRIMINAL REVISION APPLICATION NO.478 OF 2007

Mr. Kishor Lal Chugh,	]	
Aged 52 Years, Proprietor of	]	
Priyanka International, having address	]	
at 401/402, Pleasant View, Plot No.56/57,]		
Sector-14, Vashi, Navi Mumbai,	]	
Also having Shop No.3, Priyadarshini	]	
Complex, Plot No.6, Sector No.50,	]	
Nerul, Navi Mumbai.	]	Applicant

V/s

- | | | | |
|----|---------------------------------|---|--------------------|
| 1. | Mr. Shammi Krishna Gopal Gandhi |] | |
| | Residing at F-61, MIDC Satpur, |] | |
| | Nashik, District Nashik AND |] | |
| | Shop No.2, Kukreja Estate, |] | |
| | Sector – 11, CBD Belapur, |] | |
| | Navi Mumbai. |] | |
| 2. | The State of Maharashtra |] | Respondents |

.....

Mr. Sagar Kasar, for Applicant.

Mr. Shammi K. Gandhi, Respondent No.1 in person.

Mr. N.B. Patil, A.P.P. for Respondent-State.

.....

CORAM	: PRITHVIRAJ K. CHAVAN, J.
RESERVED ON	: 24 th MARCH, 2021.
PRONOUNCED ON	: 29 th APRIL, 2021.

COMMON JUDGMENT:

1. The applicant-original accused has been convicted and sentenced by the learned Judicial Magistrate First Class, Nashik in four different complaints under Section 138 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act') against which, he preferred four appeals in the Court of learned Additional Sessions Judge, Nashik, who has confirmed the judgments of conviction rendered by the learned Judicial Magistrate First Class against which, the applicant has invoked revisional jurisdiction of this Court.

2. The case has a chequered history. Facts, in a nutshell can be stated as under;

The applicant and respondent No.1 were friends. Their friendship turned into bitter animosity and acrimony due to failure of a sale transaction of a piece of land bearing No.25 admeasuring 350 square meters situate in Sector 27, Nerul, Navi Mumbai (for short 'said plot') for a consideration of Rs.19,50,000/-. It can be termed as a tale of good friends turning

foes costing them civil as well as criminal litigation against each other.

3. The applicant is a builder and developer. Respondent No.1 deals in real estate. The applicant had entered into a Memo of Understanding (for short 'MOU') dated 19th May, 1994 with one Smt. Chandrabai D. Koli (for short 'Chandrabai') and others to purchase the suit plot. The said plot was allotted to Chandrabai and others by City and Industrial Development Corporation (for short 'CIDCO') in lieu of acquisition of their agricultural land.

4. Since Chandrabai and others refused to perform their part of contract on the basis of MOU dated 19th May, 1994, the applicant preferred a Special Civil Suit No.403 of 2003 for specific performance of contract. Respondent No.1 along with one Mahavir Prasad was willing to invest money in acquiring leasehold plot. The applicant had disclosed all the facts and furnished eleven documents including copy of Special Civil Suit No.403 of 2003 to respondent No.1 and others. The applicant, respondent No.1 and Mahavir Prasad, thereafter, entered into MOU dated 17th May, 2004 *qua* the said plot on the terms and conditions stipulated therein. As per the terms of the MOU, the applicant was to obtain No Objection Certificate and hand over possession of the said plot with clear marketable title to respondent No.1 within 15 months from the date of execution of MOU.

5. Meanwhile, the applicant came to know that Chandrabai and others have created third party interest in the said plot. The

matter became complicated. Admittedly, the applicant had received Rs.7,50,000/- from respondent No.1 and Mahavir as a part consideration of the sell price. Respondent No.1 and Mahavir agreed in writing to terminate the agreement as per its clause (1). The applicant had given cheques in the name of respondent No.1 and Mahavir towards refund of the part consideration amount. It is the contention of the applicant that as respondent No.1 had not consented in writing about termination of the agreement, the applicant had issued a letter dated 17th April, 2006 asking respondent No.1 and Mahavir to return all the cheques given in their respective names. Despite receipt of the said communication, it is contended by the applicant that respondent No.1 and Mahavir neither replied nor returned the cheques. It was the stand of the applicant that he could not predict decision in the Special Civil Suit No.403 of 2003 between him and Chandrabai. He did not wish to continue the agreement with respondent No.1 and Mahavir. The applicant contends that, therefore, he was ready and willing to refund the amount of Rs.7,50,000/- to respondent No.1 and Mahavir.

6. It is the case of respondent No.1 that the applicant had failed to comply with clause 12 of the MOU dated 17th May, 2004. Respondent No.1 and Mahavir were ready and willing to terminate MOU dated 17th May, 2004 provided the applicant pays an amount of Rs.18,87,000/- to them. The cheques issued by the applicant in the name of Mahavir and respondent No.1 have been dishonoured and, therefore, there was no option for respondent No.1 than to file complaints against the applicant under section 138 of the N.I

Act in the Court of J.M.F.C, Nashik. Complaints are S.C.C No.4874 of 2006, 7990 of 2006, 2034 of 2007 and 5025 of 2007. The applicant came to be convicted and sentenced in all the four complaints. The sentences were confirmed by the Additional Sessions Judge, Nashik and, therefore, these four revisions came to be filed.

7. The applicant had also filed Special Civil Suit No.46 of 2008 in Court of Civil Judge, Senior Division, Thane on 16th January, 2008. It was a suit seeking declaration that the MOU dated 17th May, 2004 has been cancelled/terminated and that respondent No.1 has no right, title and interest in the said plot. The learned Civil Judge by a judgment and decree dated 17th November, 2014 decreed the suit, *inter alia*, declaring that MOU dated 17th May, 2004 has been terminated and respondent No.1 and Mahavir have no right, title and interest in the said plot. The said judgment has attained finality since no appeal has been preferred by respondent No.1 herein. Similarly, the same Judge on the same day, decreed Summary Suit No.84 of 2008 wherein respondent No.1 was the plaintiff and the applicant was the defendant. It was a suit under Order-XXXVII of the Code of Civil Procedure, 1908 *qua* four cheques in question enumerated below:

<i>Sr.No.</i>	<i>Cheque No.</i>	<i>Date</i>	<i>Amount</i>
1	840329	30/4/2006	7,50,000/-
2.	840332	30/08/2006	3,79,000/-
3.	840331	23/1/2007	3,79,000/-
4.	840330	23/6/2007	3,79,000/-

<i>Sr. No.</i>	<i>Cheque No.</i>	<i>Notice issued on</i>	<i>Notice received by defendant on</i>	<i>No. of criminal complaint</i>
<i>1</i>	<i>840329</i>	<i>17/5/2006</i>	<i>23/5/2006</i>	<i>4874/2006</i>
<i>2.</i>	<i>840332</i>	<i>16/10/2006</i>	<i>2/11/2006</i>	<i>7990/2006</i>
<i>3.</i>	<i>840331</i>	<i>17/2/2007</i>	<i>6/3/2007</i>	<i>2034/2007</i>
<i>4.</i>	<i>840330</i>	<i>1/7/2007</i>	<i>13/7/2007</i>	<i>5025/2007</i>

8. The learned Civil Judge has also referred judgment which he had delivered on the same day in Summary Civil Suit No. 84 of 2008. He had partly decreed the suit with costs. In paragraphs No.16 and 17, the Civil Judge observed thus;

“16] *Defendant has deposited compensation of Rs.19,50,000/- in the Sessions Court, Nasik in Cri. Appeal No.125 to 127/2012. The compensation granted by JMFC Nasik Court in all 4 criminal cases was under section 357 (1) (b) of Cr.PC. In view of the provisions of Section 357 (5) of Cr.PC, this Court is required to take into account sum of Rs.19,50,000/- by defendant to plaintiff paid as compensation in criminal cases. Hence, plaintiff is not entitled to again claim amount of Rs.18,87,000/-. However, as per provisions of Section 117 (c) of The Negotiable Instrument Act, the plaintiff is entitled to claim interest @ of 18% from the defendant. The interest is required to be calculated from the date of last cheque dtd. 23/6/2007 till realization thereof. Plaintiff has not adduced any reliable evidence on record by*

which defendant agreed to pay appreciation of the value of the suit plot as per current market value. For the reasons discussed in paragraph 13 to 16, I decide issue No.4 partly in the affirmative.

17. As discussed earlier in para 14, though defendant made payment of Rs.7,50,000/- to the plaintiff by way of compensation in a criminal case, in view of the discussion in para 16, plaintiff is entitled to claim interest @ 18% p.a from the defendant on the amount of Rs.18,87,000/-. Thus the plaintiff has cause of action for filing this suit. Hence, I decide issue no.3 partly in the affirmative.

The learned Judge partly decreed the suit as under;

O R D E R

- A] Suit is partly decreed with costs.*
- B] Prayer for repayment of Rs.18,87,000 is rejected.*
- C] Defendant shall pay interest to plaintiff at the rate of 18.8% p.a on principle sum of Rs.18,87,000/- from the date of payment of last cheque dtd. 23/6/2007 till realization thereof.*
- D] Decree be drawn accordingly.*

9. Heard Mr. Kasar, learned Counsel for the applicant. With the assistance of the learned Counsel, I have gone through the record and proceedings including the impugned

judgments passed by the learned J.M.F.C and confirmed by the first Appellate Court.

10. Mr. Kasar contends that the Courts below have not considered the defence of the applicant which has been raised by which it has been proved by the applicant that there was no existing liability against him nor the said liability was legally enforceable. He drew my attention to the recitals of the MOU between the parties as well as communication dated 17th April, 2006 addressed by the applicant to respondent No.1. According to Mr. Kasar, the applicant had made it clear that respondent No.1 was not interested in oral understanding between him (applicant and respondent No.1) by which the parties agreed that they would sign agreement as per their discussion. By the said communication, the applicant had requested respondent No.1 not to encash the cheques, since, according to the applicant, respondent No.1 was not interested in withdrawing his right on the basis of the MOU. He further argued that the applicant had informed the Banks to stop payment of the cheques in question issued by him since respondent No.1 had failed to cancel the MOU. It is submitted that there is no liability, much less, legally enforceable liability against the applicant. The learned Counsel, therefore, prayed for setting aside the impugned judgments and orders of conviction by acquitting the applicant in all the four revisions.

11. On the other hand, respondent No.1 supported the impugned judgments and orders, *inter alia*, tendered notes of arguments.

12. A short point is whether the impugned judgments are legal, proper and correct, in the sense, whether interference of this Court is warranted in its revisional jurisdiction in the judgments of conviction passed by the learned J.M.F.C and confirmed by the First Appellate Court.

13. In order to narrow down the controversy, following few undisputed facts need to be reiterated;

- (a) A MOU was entered into between applicant and respondent No.1 on 17th May, 2004, pursuant to which, respondent No.1 agreed to purchase the said plot;
- (b) The said plot was the subject matter in Special Civil Suit No.403 of 2003 pending in the Court of Civil Judge, Thane;
- (c) The applicant agreed to sell the said plot to respondent No.1 and Mahavir on condition that if he (applicant) fails in Special Civil Suit No.403 of 2003 then he would give possession of any other plot at Sector 50 Nerul, Navi Mumbai within 15 months from the date of MOU at the same cost as agreed in MOU. The applicant admitted to fulfill his part of contract as per the MOU;

- (d) Sale price was fixed for Rs.40,25,000/-. Out of which, an amount of Rs.7,50,000/- was paid by respondent No.1 and Rs.7,50,000/- by Mahavir as a part consideration;
- (e) The applicant had issued 4 postdated cheques as stated hereinabove;
- (f) The cheques were dishonoured on presentation on account of insufficiency of funds in the account of the applicant.

14. The defence as raised by the applicant is that there was no legally enforceable liability on the date on which the cheques were issued, as according to the applicant, that would have arisen only in the event of cancellation of the MOU and not otherwise. He emphasized on clause (1) of the MOU wherein it is stated that MOU could be terminated only with the written consent of both the parties. He has also taken a plea of section 52 of the Transfer of Property Act, 1882 r/w Section 23 of the Indian Contract Act.

15. From perusal of the evidence on record, it appears that the applicant had failed to comply with the terms and conditions of the MOU in order to refund proportionate amount of the price of the suit plot as per the existing market value. It was incumbent upon the applicant to first pay the amount as stated in the MOU and thereafter, MOU could have been cancelled. The Courts below have, therefore, rightly held that the defence of the applicant was

not proper and legal which has also been observed in both the judgments delivered by the Civil Judge. It reveals from the record that during pendency of Summary Criminal Case No.7990 of 2006, respondent No.1 had submitted certified copy of the consent terms dated 15th June, 2009 (**Exhibit 91**) indicating that the erstwhile owners of the said plot had relinquished their rights in favour of the applicant in Special Civil Suit No.403 of 2003.

16. Learned J.M.F.C in paragraph 14 of his judgment has referred to the said fact. That being so, the applicant should have handed over possession of the said plot to respondent No.1. He did not hand over possession for the reasons best known to him. It is pertinent to note that the applicant has suppressed this fact from this Court also since the revision applications do not clarify this fact. It appears that the applicant has suppressed this fact in respect of the consent terms dated 15th June, 2009 arrived at in Special Civil Suit No.403 of 2003. Rather, it is the contention of the applicant that Special Civil Suit No.403 of 2003 between him and Koli brothers is still pending in the Court of Civil Judge Senior Division, Thane which one finds in paragraph 9 of Revision Application No.121 of 2014. The revisions preferred by the applicant need to be thrown overboard at the threshold itself for not approaching this Court with clean hands.

17. The applicant has also failed to substantiate his defence that the cheques were issued as a *friendly interest*

free loan to respondent No.1. When he was called upon to tender his income tax returns to substantiate his defence, he failed in producing the same. It is difficult to digest that the cheques in question were given as an interest free friendly loan to respondent No.1. Had it been so, the applicant would not have issued postdated cheques. The learned Additional Sessions Judge, in the impugned judgment has, therefore, rightly observed that one of the cheques issued by the applicant bearing No.840332 dated 30th August, 2006 bears signature of the applicant with an endorsement viz; Plot No.25, Sector 27, Nerul, Navi Mumbai in respect of the said plot. Had it been a cheque in lieu of interest free loan to respondent No.1, there was no necessity of endorsing details of the said plot over the cheque itself. Thus, the applicant has raised false defence.

18. As per the MOU had there been an increase or decrease in the price of the said plot, the parties would settle the matter as per the market value as will be agreed between them. The applicant had agreed to perform his part of contract namely to hand over clear marketable vacant and peaceful possession of the said plot within 15 months. It is apparent that since he did not fulfill the said condition within 15 months as agreed in the MOU, respondent No.1 had rightly pressed for his demand of proportionate amount of the said plot and payment of the same against which the applicant had issued cheques mentioning plot number etc over the cheque itself, drawn on the banks in which he had

his account. There is no dispute that the cheques came to be issued by the applicant which bore his signatures. Under such circumstances, unless the applicant proves contrary, it has to be presumed that in view of section 118 of the N.I Act, the cheques have been issued for consideration. In view of section 139 of the N.I Act, the applicant has failed to discharge the onus and rebut the presumption in favour of the complainant/respondent No.1.

19. Upshot of the aforesaid discussion is that there is no merit in any of the revisions preferred by the applicant and, therefore, the impugned judgments do not warrant interference. Consequently, all the revision applications are rejected.

20. The applicant shall surrender before the learned J.M.F.C, Nashik within two weeks from the date of passing of this order to undergo the sentences awarded to him in complaints viz: S.C.C No.4874 of 2006, 7990 of 2006, 2034 of 2007 and 5025 of 2007.

21. If the applicant fails to surrender before the learned J.M.F.C as above, necessary steps including issuance of warrant for execution of the sentences, in accordance with law, be taken.

22. Revision Applications are disposed of in the aforesaid terms.

23. Copy of this judgment be sent to the Chief Judicial Magistrate, Nashik forthwith for compliance.

24. The parties to act upon the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.]