

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) 3 OF 2020

Rajendra s/o Bhayyalal Yadav,
aged about 43 yrs, Occ. Private,
r/o. Plot No. 20,
Shiwaji Housing Society,
Near Gudadhe Colony, Hingna road,
Jaitala, Nagpur

..... **APPLICANT**

...VERSUS...

1. The State of Maharashtra,
Through Police Station Sitabuldi,
Sitabuldi, Nagpur.
2. Shriram Chits (Maharashtra) Ltd,
having its regd. Office at 117/118,
Dalamal Towers, 'B' Wing 211,
nariman Point, Mumbai 440021 and
Branch at Nagpur, 4A, North Bazaar
Road, Dharampeth Extension, Gokulpeth,
Nagpur

Though Gen. Power of Attorney Holder
and authorized signatory Mr. Deepak s/o.
Nandlal Pendam, aged 37 yrs,
Occ. Service / Legal Assistant of
complainant Company.

... **NON-APPLICANTS**

Mr. P. A. Teni, counsel for applicant.
Mr. R.V. Shah, counsel for respondent 2.

CORAM: ROHIT B. DEO, J.
DATE : 15.01.2021

ORAL JUDGMENT:

Heard Mr. P.A. Teni, the learned counsel for the applicant and Mr. R.V. Shah, the learned counsel for non-applicant 2, with consent.

2. This application is gross abuse of process of law.

3. The applicant is seeking quashment of the order of issuance of process and the proceedings in Summary Criminal Case 1611/2018.

4. The applicant contends that the proceedings fall foul of the provisions of section 300 of the Code of Criminal Procedure ("Code" for short) and that the principle of double jeopardy comes into play.

5. The complaint which is sought to be quashed is instituted under the provisions of section 138 of the Negotiable Instruments Act ("Act" for short). The complaint pertains to cheque 371116 dated 24.11.2017 for Rs. 14,24,493/-.

6. According to the learned counsel, the principle of double jeopardy is attracted since concerning the same Chit Fund

Scheme, the respondent 2 instituted complaint 16582/2009 under section 138 of the Act, which came to be dismissed by the learned Magistrate vide order dated 27.7.2016. According to the learned counsel, since the complaint of which quashment is sought, also pertains to the cheques issued as a member of the same Chit Funds Scheme, the principle of double jeopardy is clearly attracted. The learned counsel makes an attempt to substantiate the submission by inviting my attention to certain observations in the judgment dismissing the earlier complaint. The said portion reads thus:

“23. The learned Advocate for the accused during argument drew my attention on the cross-examination of the complainant Deepak (CW-1), wherein, he has admitted that agreement of chit of accused with complainant is for amount of Rs. 50,00,000/- out of it complainant has paid only Rs. 24,28,000/- to the accused; out of Rs 30,00,000/- after deductions complainant paid Rs. 24,28,000/- to the accused; accused repaid amount of Rs. 27,58,300/- to the complainant”.

7. The learned counsel presumed to be aware of the averments in the application. The averment in the application is that the complaint of which quashment is sought pertains to amount and cheque different from the amount and cheque involved in the earlier complaint. The learned counsel is however persisting with the submission that the principle of double

jeopardy is attracted and emphasizes that the complainant is the same and so is the counsel, who represents the complainant.

8. The submission of the learned counsel that the principle of double jeopardy is attracted is noted only as a matter of courtesy to the counsel.

9. In view of the averment in the complaint that the two proceedings under section 138 of the Act pertain to different amounts, different cheques and different period, precious judicial time ought not to have been wasted.

10. In the interest of restraint, and again as a matter of courtesy to the learned counsel, I refrain from making any further observation. Suffice it to record that this application is as gross as an abuse of the process of law, as any.

11. The application is dismissed with cost of Rs. 5,000/- which shall be deposited with the High Court Legal Aid Sub-Committee, Nagpur within 15 days.

12. The Registrar (Judicial) shall ensure that the cost is

deposited within the said period. If the cost is not deposited, the registrar (Judicial) shall communicate copy of this order to the Collector, Nagpur, who shall within 30 days of the receipt of the communication, recover amount of cost as arrears of land revenue.

13. The application is dismissed.

Judge

Belkhede RS