

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

CRIMINAL WRIT PETITION 1016 OF 2019

Shankar s/o. Harsukh Kabra,
Aged about 61 yrs,
Occ. Business partner-
Shraddha Developers and Builders,
R/o. Flat No. 6,
Sai Krupa Apartment, 3rd Floor,
Shastri Nagar, Akola,
Dist. Akola

....**PETITIONER**

VERSUS

- 1) State of Maharashtra,
through Police Station Officer Akola,
Dist. Akola.
- 2) Girish s/o. Gangadhar Agrawal
Aged about 66 yrs,
Occ. Business,
- 3) Sau. Kiran Girish Agrawal,
Aged about 63 yrs,
Occ. Housewife and Business,
Both r/o. Maratha Nagar,
Akola, Tah. Dist. Akola

.... **RESPONDENTS**

Mr. R.N. Ghuge, Counsel for the petitioner.
Mr. V.A. Thakare, APP for respondent 1.
Mr. D.R. Khapre, Counsel for respondents 2 & 3.

CORAM : ROHIT B. DEO, J.
DATE : 06.01.2021

ORAL JUDGMENT :

Heard Mr. R.N. Ghuge, the learned counsel for the

petitioner, Mr. V.A. Thakare, the learned APP for respondent 1 and Mr. D.R. Khapre, the learned counsel for respondents 2 and 3.

2. The petitioner is invoking this Court's extra-ordinary jurisdiction under Article 226 and 227 of the Constitution of India and inherent power under section 482 of Code of Criminal Procedure, since he is dissatisfied with the order dated 10.10.2019, rendered by the Additional Sessions Judge, Akola in Criminal Revision 159/2013, effect of which is to discharge the respondents 2 and 3 for offence punishable under sections 420, 468, 471 read with section 34 of Indian Penal Code.

3. It would be necessary to note few facts and events which precede the institution of Criminal Case 1042/2011 in which respondents 2 and 3 are discharged.

4. Respondent 3 Mrs. Kiran Girish Agrawal instituted Criminal Case 3364/2008 alleging that cheque issued by the petitioner herein in the capacity as partner of M/s. Shraddha Developers and Builders was dis-honoured and no payment was made despite the receipt of the statutory notice. The said

proceedings culminated in amicable settlement between Mrs. Kiran Agrawal and co-accused. It further appears that the petitioner Shankar Kabra was a defendant in civil suit filed by Mrs. Kiran Agrawal (Regular Civil Suit 397/2012) for recovery of amount on the basis of the dis-honoured cheque, and the civil suit culminated in decree against the petitioner Shankar Kabra.

5. The learned Sessions Judge has noted that neither in the reply to the statutory notice nor in the written statement preferred by the petitioner herein in Regular Civil Suit 397/2012, is a defence taken that the cheque or any writing is altered. Such allegation appears to have been levelled only in the criminal complaint in which respondents 2 and 3 are discharged by the revisional Court. The learned Sessions Judge further notes that there is no expert opinion in respect of the alleged forgery. The learned counsel for the petitioner is to a certain extent justified in submitting that want of expert opinion, at that stage, ought not to have weighed with the revisional Court. However, even if that aspect is kept out of consideration, I am more than satisfied, that the order of discharge warrants no interference in exercise of writ jurisdiction.

6. Restricted as the scope is, a Court considering a discharge application would fail in its duty if the material on record is not sifted if only to ascertain whether there is a case for trial. While a minute examination of the material and a probing inquiry into the probative value thereof may not be justified, the Court would be entitled to assess the material and to ascertain whether on broad probabilities a case is made out warranting a trial. Considering that the petitioner did not allege alteration in the cheque, either in the year 2008 when he was issued the statutory notice envisaged under the provisions of the Negotiable Instruments Act or then, when he filed written statement in Regular Civil Suit 397/2012 in which ultimately he suffered a decree, I am more than satisfied that on broad probabilities, no case for trial is made out and continuation of the proceedings would tantamount to an abuse of the process of Court.

7. The petition is dismissed.

Judge

BelkhedeRS