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

CRIMINAL REVISION APPLICATION NO.283 OF 2019

Tapankumar s/o Pramodnath Ozha,
Aged-62 years, occupation-business,
R/o-Near English School Warthi,
Tahsil-Mohadi, district – Bhandara. **APPLICANT.**

:: VERSUS ::

Shri Prabhulal Natthulal Dave,
Aged-63 years, occupation :- business,
R/o :- Gyaneshwar Nagar,
Near Railway Line, Bhandara,
Tahsil & district Bhandara **NON-APPLICANT.**

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Shri S.K.Thengari, Counsel for the Applicant.
Shri M.M.Kalar, Counsel for the Non-applicant.

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CORAM : **VM.DESHPANDE, J.**
DATE : **JANUARY 25, 2021**

ORAL JUDGMENT

1. Heard learned counsel Shri S.K.Thengari for the applicant and learned counsel Shri M.M.Kalar for the non-applicant. **Rule.** Rule is made returnable forthwith. Heard finally by consent of learned counsel for parties.

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2. By this revision application, the applicant is challenging order dated 18.10.2019 passed by learned Additional Sessions Judge, Bhandara below Exhibit 54 in Criminal Appeal No.12/2016 whereby learned Judge of the Lower Appellate Court rejected the application filed on behalf of the accused seeking permission to join the State of Maharashtra through the Collector as party respondent.

3. The non-applicant herein is original complainant, whereas present applicant is an accused. The complainant filed a complaint in the Court of learned Judicial Magistrate at Bhandara for offence punishable under Section 138 of the Negotiable Instruments Act. As per the complaint, the complainant and the accused are acquainted with other since last 7-8 years. The accused runs a business under name and style as 'Guru Datta Enterprises. He was in need of money and, therefore, he demanded hand loan Rs.2.00 lacs to the complainant. The said amount was paid by the complainant on 7.4.2011. On the said day itself, the accused executed an agreement and also issued a post

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dated cheque bearing No.419142 dated 4.11.2011 of the State Bank of India with a promise that on due date of the cheque his banker will honour the said cheque. However, when the said cheque was deposited for its encashment on 5.11.2011, banker of the accused returned the cheque for a reason that "Balance not available." After a statutory Notice, when the amount was not paid, the complaint was filed. The said complaint was registered as Summary Criminal Case No.96/2012. The accused appeared. Various documents were filed by the complainant and he also examined himself and other witnesses. Similarly, the accused examined himself as a defence witness and closed his case. Learned Magistrate vide judgment dated 12.1.2016 found that the accused has committed an offence punishable under Section 138 of the Negotiable Instruments Act and, therefore, he was convicted for the said offence and was directed to suffer two months imprisonment simple in nature and also directed the accused to pay Rs.4.00 lacs by way of compensation.

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4. Feeling aggrieved thereby, the accused filed an appeal in the Court of learned Additional Sessions Judge at Bhandara. The said appeal was registered as Criminal Appeal No.12/2016. Learned Additional Sessions vide order dated 8.7.2016 suspended the substantive jail sentence imposed upon the accused and he was directed to furnish Bail Bonds of Rs.15000/- and was directed that the accused shall deposit Rs.1.00 lac towards compensation. This part was challenged by the accused before this Court by filing a criminal revision bearing No.126/2016 and on 14.6.2017 the said revision filed on behalf of the accused was allowed and direction to pay Rs.1.00 lac towards compensation was quashed and the Court below was directed to decide the appeal within a period of one year.

5. Thereafter, the accused filed an application Exhibit 54 in Criminal Appeal No.12/2016 seeking permission to join the State of Maharashtra through the Collector as party respondent since State of Maharashtra, through PSO Bhandara is already joined as respondent No.2. According to the accused, his contract

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with 'Sunflag Company' was terminated and he became insolvent and, therefore, he filed an appeal against the said 'Sunflag Company' in this Court bearing appeal stamp No.13193/2013 under order XXXIII. The accused, therefore, submitted that, the State of Maharashtra, through the Collector is necessary party. The said application Exhibit 54 is rejected and, therefore, this revision.

6. According to learned counsel Shri S.K.Thengari for the applicant, the State of Maharashtra, through the Collector is necessary party inasmuch as if the appeal of the applicant is dismissed, the amount can be recovered only through the Collector.

7. In my view, learned Additional Sessions Judge, Bhandara has rightly rejected the application filed on behalf of the accused. Filing of appeal by the applicant against 'Sunflag Company' has nothing to do with proceedings pending on the file of learned Additional Sessions Judge at Bhandara vide Criminal Appeal No.12/2016 which arises because the accused was convicted by learned Magistrate at Bhandara on the complaint filed

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by the complainant under Section 138 of the Negotiable Instruments Act as the accused gave cheque in discharge of his liability to pay amount was not honoured. Learned Magistrate directed that if the amount of compensation is not paid, the accused will have to undergo simple imprisonment for one month. Application Exhibit 54 is moved only to prolong the criminal appeal pending on the file of learned Additional Sessions Judge at Bhandara which was expedited by this Court in criminal revision filed by the accused.

8. In this view of the matter, there is no merit in this revision. The criminal revision is rejected.

The criminal revision is disposed of. Rule is discharged.

JUDGE

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