

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

CRIMINAL WRIT PETITION NO.1075 OF 2017

Surendrakumar s/o Indrasen Bajaj
Age 56 years, Occ: Business,
R/o In front of Railway Station,
Wardha.

..... **PETITIONER**

...V E R S U S...

1. State of Maharashtra through
PSO Wardha (City)
Tahsil and District Wardha.
2. Rajendrasingh Shankarsingh Thakur
Age 45 years, Occ: Business.

R/o Malgujaripura, Near Indira Market,
Wardha,
Tahsil and District Wardha.

..... **RESPONDENTS**

Mr. P.P. Kotwal, Advocate for Petitioner.
Mr. N.R. Rode, APP for Respondent 1/State.
Mr. Jayesh Ujwane, Advocate h/f Mr. Deoul Pathak,
Advocate for Respondent 2.

CORAM: **ROHIT B. DEO, J.**
DATE: **7th JANUARY, 2021.**

ORAL JUDGMENT:

Heard.

2. The petitioner claims that on 05.05.2008 he and his
brother jointly sold land to respondent 2 herein for consideration

of Rs.61,72,000/-. Petitioner claims that respondent 2 issued two cheques for Rs.8,15,000/- each as against the balance consideration of Rs.16,30,000/-, which were dishonoured.

3. Petitioner preferred an application purportedly under section 156(3) of the Criminal Procedure Code, 1973 (Code) seeking investigation qua alleged offences punishable under sections 420, 468, 471 read with 504 and 506 of the Indian Penal Code. Paragraph 2 of the application refers to the balance consideration and the issuance of cheques. In paragraph 3 of the application the averment is that the two cheques were dishonoured since the signature of the respondent 2 did not tally with the specimen signature with the bank. In paragraph 4 the allegation is that the respondent 2 – purchaser ought to have signed similarly on the sale-deed and on the two cheques. Be it noted, that it is not even the case of the complainant – petitioner herein, that the respondent 2 forged any document. It is common sense that mere difference in signature would not amount to forgery.

4. Be that as it may, the learned Magistrate declined to direct investigation. Two reasons are recorded. The first is that the allegation is based on documents in possession of the applicant –

complainant and it would not be necessary for the police to make any investigation and the other reason is that the allegation is levelled after ten years. It is also observed in the passing that the photo-copies of the cheque, memo and sale-deed render it impossible to undertake a comparison.

5. The petitioner challenged the order of the learned Magistrate of refusing to direct investigation, in Criminal Revision 35/2017 which is dismissed by the District Judge-3 and Additional Sessions Judge, Wardha vide judgment dated 21.09.2017. The learned Sessions Judge observes thus:-

7. I have perused the record and have heard submissions of both the learned advocates. It is an admitted position that proceedings under section 138 N.I. Act were filed in respect of the above bounced cheques. It is further an admitted position that the respondent No. 2 came to be acquitted in the above proceedings and that an appeal is pending in the Bombay High Court against the said order. It is further admitted that a Civil Suit in respect of the above transaction came to be decreed in favour of the applicant vide order dated 24/08/2017. It is also admitted that the sale transaction took place in May, 2008 and the report with the police came to be filed on 03/01/2017. In view thereof, I am of the considered opinion that there is gross delay in filing the said report. Moreover, appropriate proceedings have already been filed in respect of the above bounced cheques. The learned trial judge has rightly rejected the application of the applicant.

6. Mr. Kotwal would submit that the learned Magistrate seriously erred in refusing to direct investigation, and at any rate, erred in not exercising the jurisdiction to treat the application under section 156(3) of the Code as complaint. Mr. Kotwal would submit that delay *per se* is not a ground which ought to have influenced the learned Magistrate to decline investigation.

7. In my considered view, the learned Magistrate was more than justified not only in declining the investigation, but further in not entertaining the application under section 156(3) of the Code and issuing process in exercise of power under section 191 of the Code. I have already made a reference to the allegations in the complaint. Even if the allegations in the complaint are taken at face value, no offence is made out much less under the sections invoked. The only allegation is that the signature of the respondent 2 on the sale-deed and his signature on the two dishonoured cheques differed. The ingredients of sections 420, 471 and 468 IPC are not made out even if, *arguendo*, every averment in the complaint is considered factually correct.

8. The petitioner has initiated proceedings under section 138 of the Negotiable Instruments Act. Mr. Kotwal states that

while the trial court acquitted the respondent 2, an appeal challenging the acquittal is pending. It is further common ground that the petitioner instituted civil suit for recovery of the amount in question, which is partly decreed. While the prayer for setting aside the sale-deed is rejected, the alternate prayer of recovery of the balance consideration is granted.

9. Considering the matter holistically, I am satisfied that permitting continuation of proceedings on the basis of the allegations in the complaint dated 03.01.2017 would amount to an abuse of the process of court and therefore, irrespective of the reasons recorded by the learned Magistrate, it would not be necessary to interfere in exercise of inherent power under section 482 of the Code.

10. The petition is dismissed.

JUDGE