

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

944 CRIMINAL WRIT PETITION NO. 132 OF 2020

AND

945 CRIMINAL WRIT PETITION NO. 133 OF 2020

SUKLAL S/O. AALASING PAWAR

VERSUS

THE STATE OF MAHARASHTRA AND ANR

...

Advocate for Petitioner : Mr. Rathod Sandip P.
APP for Respondent No.1/State : Smt. D. S. Jape

...

CORAM : KISHORE C. SANT, J.

DATE : 7th DECEMBER 2022.

Per Court :

Heard.

1. Both the petitions are between the same parties. The Petition No.132/2020 is arising out of S.C.C. No.797/2015 that is filed in respect of cheque no. 016804 dated 23.09.2015 issued on Devgiri Nagri Sahakari Bank Ltd. Kannad Branch. Whereas the Writ Petition No.133/2020 is arising out of S.C.C. No.796/2015, which is filed in respect of cheque no. 016805 dated 29.09.2015 issued on Devgiri Nagri

Sahakari Bank Ltd. Kannad Branch. Both the cheques have been issued by the present Respondent No.2 in the name of present Petitioner. Both the cheques were dishonored and therefore proceedings under Section 138 of the Negotiable Instruments Act, were filed.

2. It is submitted that cheque no. 016805 dated 29.09.2015 by inadvertent mistake is filed with the evidence in S.C.C. No.796/2015 instead of S.C.C. No.797/2015. At the same time, the cheque no. 016804 issued on Devgiri Nagri Sahakari Bank Ltd. Kannad Branch dated 23.09.2015 is inadvertently filed alongwith evidence in S.C.C. No.797/2015 instead of S.C.C. No.796/2015. Learned Advocate for the Petitioner submits that because of this inadvertent mistake, he filed applications at Exhibit 38-D in both the proceedings for return of the original cheques alongwith intimation. He submits that however by order dated 21.06.2018, the learned Judicial Magistrate First Class (Court No.2), Kannad rejected both the applications, for the reasons that already the cheques were shown to the witnesses in the respective cases and they have identified and now the said cheques are already exhibited. It is also observed that since beginning the mistakes have been committed by the Complainant and since the documents are also

exhibited, those cannot be returned with that reasoning applications are rejected.

3. None appeared for Respondent No.2 on last occasion. In spite of service and in spite of appearance, though the vakalatnama is filed, none appears for Respondent No.2 today also. Therefore, the Court decided to proceed with the matter.

4. Considering the submission and considering that the cheques are wrongly filed due to inadvertently mistake, there is no reason for the Complainant/Petitioner to commit such mistake deliberately and this certainly can be said to be inadvertent mistake. Interest of justice would be served by giving an opportunity to the Informant to correct the mistake to serve the cause of justice. Hence the following order.

ORDER

(i) Both the Writ Petitions are allowed.

(ii) The impugned orders dated 21.06.2018 passed by the learned Judicial Magistrate First Class (Court No.2), Kannad on applications below Exhibit-38 in S.C.C. No.796/2015 and S.C.C. No.797/2015 be quashed and set aside.

(iii) The Applications below Exhibit-38 in S.C.C. No.796/2015 and S.C.C. No.797/2015 pending before the learned Judicial Magistrate First Class (Court No.2), Kannad are allowed.

5. Both the Writ Petitions are disposed off in the aforesaid terms.

[KISHORE C. SANT, J.]

Najeb.