

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 CRIMINAL WRIT PETITION NO.303 OF 2022

NAMDEO GANPAT KADAM

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Mr. Imale Ramesh Ramdas
APP for Respondent No.1 – State : Mr. R. B. Bagul

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 05.07.2022

ORDER :-

. Heard learned Advocate for the petitioner and learned APP. No necessity to issue notice to the respondent No.2.

2. By this writ petition, the petitioner is invoking the constitutional powers of this Court under Article 226 and 227 of the Constitution of India to challenge the order below Exhibit-16 passed by learned Additional Chief Judicial Magistrate, Sangamner on 20.11.2021 in S.C.C. No.559 of 2021, thereby allowing the application filed by the respondent No.2 under Section 143(A)(2) of the Negotiable Instruments (Amendment) Act, 2018 (hereinafter referred to as the “NI Act”).

3. It has been vehemently submitted on behalf of the petitioner that the petitioner had filed a complaint with Police Inspector, Sangamner City Police Station, Dist. Ahmednagar on 24.03.2021 contending that the complainant i.e. respondent No.2 runs a *Bhishi* and for its security, he had taken four cheques and signatures on stamp papers. Thereafter, he had got certain documents written on those stamp papers stating it to be the transaction in respect of his immovable property. When the petitioner realized the same, he had gone to Police Station on 01.12.2020 to lodge a report, but it was not taken. Thereafter also there were attempts to lodge reports. Even he had gone missing in view of the harassment given to him by the informant and others and then he had returned after about a month. Thereafter also he had tried to lodge reports, but they were not taken. He has given all those details as to what had happened with him and ultimately that written complaint was given, thereby he intended to show that there is no enforceable debt and liability as against the complainant and disputed cheque is nothing but misuse of the cheque which was taken as security. In spite of that, after the complainant had filed application Exhibit-16 under Section 138 of the Negotiable Instruments Act, the learned Additional Chief Judicial Magistrate has allowed that application under Section 143(A) of the NI Act. It has been wrongly stated that interim compensation of 20% of the

cheque amount would be just and reasonable when in fact it is the outer limit. Taking into consideration the Covid-19 situation and loss in the business, it ought to have been at the most 5% of the disputed cheque amount.

4. At the outset, it is to be noted that after the complaint was filed contending that the present petitioner/original accused has committed offence under Section 138 of the Negotiable Instruments Act, verification was recorded and then process appears to have been issued. Thereafter, as per the order, it can be gathered that the plea of the accused i.e. the present petitioner has been recorded on 25.03.2021 and thereby he has pleaded not guilty. By way of amendment to the Negotiable Instruments Act in 2018 Section 143(A) has been inserted empowering the concerned Magistrate to take amount of compensation from the accused and the limit that has been imposed as per sub-section (2) shall not exceed 20% of the cheque amount. We are definitely required to consider the object behind the insertion of this provision. It was to get certain amount of the cheque amount secured before the trial proceeds. In the complaint, the complainant has contended that he had issued statutory notice to the accused on 28.12.2020 and the said notice was refused to be taken by the accused on 02.01.2021. In fact, if that notice would have been accepted by the petitioner, he would have had

the opportunity to put forth his say and give reply to the notice by the complainant, but that opportunity has been lost by the accused by his own act.

5. Application Exhibit-16 simply states that the disputed cheque amount is Rs.7,00,000/- and the accused be ordered to deposit 20% of the cheque amount in the Court. Say of the accused has been called and it is stated that the allegations in the complaint are that by misleading the accused and cheating him, the blank cheques were taken and they have been misused. The accused is not liable to pay any amount to the complainant and it was then stated that since the application is not maintainable and it is with an intention to cause harassment to him, it should be rejected. It is to be noted that in his say, the accused has not stated anything about his complaint with the police on 24.03.2021. When specific question to that effect was asked to the learned Advocate for the petitioner he submits that he has not taken instructions in that respect from his client. It is to be noted that the filing of Say to Exhibit-16 was the further opportunity for the accused to bring on record his case as well as the fact that he want to canvass that the disputed cheque is taken as security and it has been misused. In fact, the law does not say at the stage of asking the accused to deposit compensation amount under Section 143(A) of the NI Act, the concerned Magistrate should

hold any inquiry in depth. It would be the interim compensation that is required to be directed to be paid/deposited by the accused. Therefore, on the basis of whatever material was before the learned Additional Chief Judicial Magistrate, he has passed the said order. Even in the alternative, the accused has not stated that due to Covid-19 situation he has suffered loss and if at all the Court comes to the conclusion that the application Exhibit-16 deserves to be allowed, that amount should be 5% of the disputed cheque. Now, everything is tried to be stated in the writ petition, when the opportunity was available to the accused to bring everything on record when the application was before the learned Additional Chief Judicial Magistrate, Sangamner. Under this circumstance, no case is made out to exercise the constitutional powers of this Court in favour of the petitioner. The writ petition stands dismissed.

[SMT. VIBHA KANKANWADI, J.]

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