

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

26 CRIMINAL WRIT PETITION NO.456 OF 2022

KUSUM W/O KANTILAL RATHOD  
VERSUS  
SUDARSHAN DAIRY PRODUCTS, THROUGH, D. S. UNDE  
THROUGHITS, G.P.A. HOLDER DEEPAK DATTATRAYA GAIKWAD

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Advocate for Petitioner : Mr Rahul A. Tambe

**CORAM : SHRIKANT D. KULKARNI, J.**  
**DATE : 19<sup>th</sup> SEPTEMBER, 2022**

**PER COURT :**

1. Mr Rahul Tambe, learned counsel for the petitioner seeks leave to place on record photo copy of the cheque in dispute for perusal of the Court. Leave granted.
2. Photo copy of the cheque in dispute is taken on record and marked 'X' for identification.
3. Heard Mr Rahul Tambe, learned counsel for the petitioner.
4. Respondent No. 2, who is proprietor of the Jasoda Dairy Farm is reported to be dead and death certificate to that effect is placed on record at page No. 24. On going through the same, it is noticed that respondent No.2/original accused No.1 is expired on 03.11.2021. As such, the proceedings stands abated against respondent No.2/original accused No.1.
5. Respondent No.1, who is original complainant/proprietor of Sudarshan Dairy Products, remained absent in view of first notice issued by this Court for admission of this petition. By marking absence of

respondent No.1/original complainant, this Court was constrained to issue notice for final hearing to respondent No.1.

6. Respondent No.1 though duly served with notice for final hearing of this petition, remained absent. By marking absence of respondent No.1/original complainant, the petition is proceeded further for final hearing and disposal according to law.

7. Mr Rahul Tambe, learned counsel for the petitioner invited my attention that cheque in dispute does not bear signature of the present petitioner. It bears signature of respondent No.2/her husband, who is now dead. He further invited my attention to the copy of complaint in Summary Criminal Case No. 373/2020. He pointed out that almost all allegations are leveled against respondent No.2/original accused No. 1. The present petitioner has no role in the commercial transactions if any, between respondent Nos. 1 and 2. He submitted that present petitioner had no role to play in issuance of cheque in dispute. The learned Magistrate did not consider this aspect and passed order of issue process against present petitioner and her husband/respondent No.2 without applying judicial mind to the facts of the case. He submitted that the order of issue process passed by the learned Magistrate against the present petitioner is bad in law. It is liable to be quashed and set aside.

8. On perusing the photo copy of the cheque in dispute, it is evident that the cheque in dispute seems to have been issued by respondent No.2/original accused No.1. It is not signed by the present petitioner though the same stated to be issued from the joint account.

Even one step ahead, on going through the averments made in the complaint, it would reveal that almost all allegations are leveled against accused No.1/respondent No.2, who is now reported to be dead. There was commercial transaction between respondent No.1 and respondent No.2/original accused No.1 as per the allegations made in the complaint. No specific role is attributed against the present petitioner in connection with such alleged commercial transaction. She has been unnecessarily roped in the case of dishonour of cheque initiated by respondent No.1/original complainant. The learned Magistrate seems to have passed order of issue process against the present petitioner and her husband without taking into consideration the facts of the case and without applying judicial mind in a proper way. The order of issue process passed by the learned Magistrate against the present petitioner is absolutely improper and incorrect when entire allegations are leveled against the original accused No.1/respondent No.2. The present petitioner is not anyway concerned with the commercial transaction if any, between respondent Nos. 1 and 2. Certainly, the order of issue process passed by the learned Magistrate against the petitioner is liable to be quashed and set aside.

#### **ORDER**

- (I) The criminal writ petition stands allowed in terms of prayer clause (B).
- (II) No order as to costs.
- (III) The Criminal Writ Petition is accordingly disposed of.

**[ SHRIKANT D. KULKARNI, J. ]**