

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

36 CRIMINAL WRIT PETITION NO.475 OF 2022

JAGDEEPSING SURINDERSINGH MARJARA
VERSUS
GURDEEPSING DARSHANSING SODHI

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Advocate for Petitioner : Mr. Amit Arunkumar Mukhedkar.

Advocate for Respondent : Mr. Shivsamb N. Janakwade.

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CORAM : **SHRIKANT D. KULKARNI, J.**

DATE : 29th August, 2022.

PER COURT:

. Heard finally with consent of both the sides.

2 The petitioner is challenging the order of issue process passed by the learned Judicial Magistrate First Class, (Court No.13), Aurangabad in SCC No.4219 of 2018 dated 13th June, 2018, which is upheld at the hands of the learned Additional Sessions Judge, Aurangabad in Criminal Revision No.189 of 2021 dated 4th March, 2022.

3 Heard the learned counsel for both the sides.

4 Mr. Mukhedkar, learned counsel for the petitioner vehemently submitted that the learned Magistrate has not applied his mind to the facts of the case and documents on record. He submitted

that the impugned order of issue process is passed mechanically by the learned Magistrate. There is agreement on record, which is not considered by the learned Magistrate before passing the order of issue process. He submitted that there was a partnership firm and the present petitioner was the partner of the firm as well as the respondent. The firm went into liquidation. This is the factual scenario and there is documentary evidence on record and this aspect is not considered by the learned Magistrate. He submitted that even the revisional Court has also not considered all these aspects and mechanically dismissed the revision. He, therefore, urged to allow this petition and quash the impugned orders passed by the Courts below.

5 Per contra, Mr. Janakwade, learned counsel for the respondent supported the impugned order of issue process passed by the learned Judicial Magistrate First Class, Aurangabad, which is upheld by the learned Additional Sessions Judge, Aurangabad. He submitted that there is no legal defect in the orders passed by the Courts below. It is a case of dishonour of cheque. Even though there is an agreement between the parties regarding arbitration clause, both the proceedings can go on simultaneously.

6 I have considered the submissions of both the sides. Perused the impugned order passed by the learned Magistrate on 13th

June, 2018, whereby process was issued against the present petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. On going through the same, it is evident that the learned Magistrate has applied his judicial mind. The learned Magistrate has gone through the complaint, affidavit and also perused the documents filed alongwith the list. The factual aspect regarding partnership firm is also considered. It is also observed by the learned Magistrate that in order to refund the capital amount, the petitioner has issued cheques in question, which are dishonoured by reason of "Refer to Drawer". It is also observed by the learned Magistrate that the mandatory notice was also issued to the petitioner within the prescribed time. Even though the petitioner has replied the same, not complied with within 15 days. The learned Magistrate has further observed that there are sufficient grounds to proceed against the petitioner and *prima-facie* offence punishable under Section 138 of the Negotiable Instruments Act is made out. By recording such observations and reasons, the learned Magistrate was pleased to pass the order of issue process. I do not see any error on the part of the learned Magistrate in passing the impugned order.

7 On going through the impugned order passed by the learned Additional Sessions Judge, Aurangabad in Criminal Revision No.189 of 2021, it appears that the learned Additional Sessions Judge

has also recorded findings, which are also supporting the case of the complainant. Both the Courts below have held that *prima-facie* offence is made out against the petitioner. The order of issue process is upheld by the learned Additional Sessions Judge. No interference is called for by way of writ petition. There is no material to interfere with the orders passed by the Courts below. There is no merit in the writ petition. It is liable to be dismissed. Hence, the following order is passed:

ORDER

- I. The criminal writ petition stands dismissed.
- II. No order as to costs.

[SHRIKANT D. KULKARNI, J.]

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