

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.490 OF 2022

Birmal s/o Vasudev Bobade ... **PETITIONER**

VERSUS

The State of Maharashtra & anr. ... **RESPONDENTS**

.....
Mr. Shailendra S. Kulkarni, Advocate for petitioner
Mr. S.P. Sonpawale, A.P.P. for respondent No.1 – State
.....

CORAM : R. G. AVACHAT, J.

DATE : 31st MARCH, 2022.

ORDER :

Heard learned counsel for the petitioner and learned A.P.P. for respondent No.1 – State.

2. The challenge in this petition is to an order dated 21/3/2022, passed by Additional Sessions Judge-1, Bhoom, on application Exh.28 in Criminal Appeal No.21/2017. The petitioner has been convicted for offence punishable under Section 138 of the Negotiable Instruments Act. The respondent No.2 was the original complainant in a case instituted under Section 138 of the Negotiable Instruments Act. The petitioner has preferred Criminal Appeal, being Appeal No.21/2017 against his conviction and sentence. The respondent/ complainant also filed a civil suit for recovery of

the amount covered under the cheque. It being Civil Suit No.52/2011. The suit was decreed. The petitioner preferred appeal thereagainst (Civil Appeal No.53/2019). The appellate Court allowed the appeal, remanding the suit back to the trial Court to decide it afresh. The petitioner, therefore, preferred application Exh.30, requesting the appellate Court to defer the hearing of Criminal Appeal until the decision of the civil suit. The appellate Court rejected the application. Hence the petition.

3. It was a criminal case instituted otherwise on police report (complaint), being S.C.C. No.86/2009. The petitioner herein was convicted. Appeal thereagainst is pending. It is evident from the order impugned herein that the arguments in the appeal were over and the matter was reserved for passing judgment. If the appeal fails, the petitioner has further remedy of revision or writ. In the facts and circumstances of the case, reference to Sections 41 to 43 of the Evidence Act is irrelevant herein. This Court is, therefore, not even inclined to issue notice in the matter. Criminal Writ Petition is dismissed.

(R. G. AVACHAT)
JUDGE

fmp/-