IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.564 OF 2022

Balaji Motiram Dhage ... Petitioner

Versus

Subhashchandra Bansilal Joshi
Through GPA holder
Santosh Subhaschandra Joshi
and another ... Respondents

....

Mr. S.S. Gangakhedkar, Advocate for the Applicant
Mr. R.K. Temkar, Advocate for Respondent No.1
Mr. S.P. Deshmukh, APP for Respondent No.2/State

....

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 26 JULY, 2022

PER COURT:-

. Heard finally with consent of both the sides.

2. The petitioner is challenging the impugned order of issue process passed in SCC No. 108 of 2018 by the learned Judicial Magistrate, First Class Umri dated 13.04.2018.

3. Heard Mr. S.S. Gangakhedkar, learned counsel for the petitioner, Mr. R.K. Temkar, learned counsel for respondent No.1 and Mr. Deshmukh, learned APP for respondent No.2/State.

4. On perusing the copy of the complaint, it would reveal that the complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the "N.I. Act") was presented before the learned Judicial Magistrate, First Class, Umri on 13.04.2018. The learned J.M.F.C., after perusing the complaint and the documents on record, was pleased to issue process against the petitioner/accused for the offence punishable under Section 138 of the N.I Act.

5. The dispute is centred around whether the cheque presented for encashment with the bank was within a period of limitation as provided under the provisions of N.I. Act.

6. According to Mr. Gangakhedkar, learned counsel for the petitioner, the chaque in question was presented beyond the period of limitation. He submitted that by way of an amendment made in Section 138, the period for presenting the cheque for encashment with the bank is now reduced to three months. He invited my attention to the copy of the complaint, more particularly, para 4. He pointed out that according to the pleadings of the complainant, the cheque in

question was presented with Dena Bank, Branch Peth Umarion 02.02.2018. The period of three months came to be an end on 31.01.2018. As such, it was unwarranted on the part of the learned Judicial Magistrate, First call to take cognizance and pass the order of issue process, when the cheque was presented beyond the period of limitation. No offence under Section 138 of the N.I.Act is made out. The order is illegal. The entire proceeding is liable to be quashed.

7. Per contra, Mr. Temkar, learned counsel for respondent No.1/original complainant supported the impugned order of issue process passed by the learned Judicial magistrate, First Class. He invited my attention to the copy of receipt regarding presentation of the cheque with Dena Bank (page 42). He pointed out that the cheque was presented with Dena Bank for encashment on 31.01.2018. It was within the limitation of three months as provided under Section 138 of the N.I.Act. He submitted that the complainant has committed an error while mentioning the date in the pleadings regarding presentation of the cheque. It was a guanine mistake on his part. The copy of the presentation of the cheque clearly speaks that it was presented within the time. The learned Magistrate has rightly taken the

cognizance. He pointed out that the order of issue process came to be passed long back in the year 2018 and the petitioner has challenged the order of issue process in the year 2020. He submits that it lacks bonafides. He submitted that the petition came to be filed when the complainant filed his affidavit of examination in chief. Those aspect may be taken into consideration. He submitted that there is no merit in the petition.

8. While giving the reply, Mr. Gangakhedkar submitted that the copy of receipt of presentation of the cheque with Dena Bank was not submitted by the complainant while filing the private complaint with the Judicial Magistrate, First Class. This exercise is made by the complainant/respondent No.1 after filing of this petition. As per the pleadings of the complainant, the cheque was presented for encashment after a period of three months limitation. Now that defect cannot be cured. Whereas, Mr. Temkar, learned counsel for respondent No.1/complainant submitted that the complainant has applied to the Judicial Magistrate, First Class for necessary correction in the pleadings regarding the date of presentation of the cheque, however, due to the stay order passed by this Court, no order is passed.

9. The date of presentation of the cheque with the Dena Bank, Branch Peth Umari is a fact in dispute. It needs to be proved only upon the examination of the concerned bank officer. His evidence would focus whether the cheque in dispute was presented on 31.01.2018 or 02.02.2018. At this stage, it is difficult to arrive at conclusion that the cheque was presented beyond the period of limitation for encashment; when the copy of receipt of the presentation of the cheque speaks that it was presented on 31.01.2018. It would be just and proper that let the evidence be tendered before the Magistrate in order to have a correct finding on the issue of limitation and date of presentation of the cheque with the bank for encashment. It is revealed during the course of the argument that the complainant has filed his affidavit of examination in chief, and as such, the remaining exercise would be necessary to arrive at correct conclusion. At this stage, it may not be proper to quash the proceedings simply on the erroneous pleadings of the complainant.

10. Having regard to the above reasons and discussion, I am not convinced to quash the entire proceedings. Resultantly, I proceed to pass the following order.

O R D E R

(i) The criminal writ petition stands dismissed.

(ii) The learned Judicial Magistrate, First Class, Umri, Dist. Nanded to expedite the trial and dispose of the same as early as possible, preferably within three months from the date of receipt of this order.

(iii) The petition is disposed of accordingly.

[SHRIKANT D. KULKARNI]
JUDGE

S.P. Rane