

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3245 OF 2022

Nawaj Bashir Maner,
Age 29 years, Occ.Business,
R/o.Budhwar Peth, Maner Building,
Miraj, Tal.Miraj, District Sangli.

Petitioner

versus

1. Sanjay Sunil Narwani, Age 29 years,
Occ.Business, R/o.Plot No.5/6,
Behind Sevasadhan Hospital,
Chandanwadi, Miraj, Dist.Sangli.
2. The State of Maharashtra.

Respondents

Mr.Ramesh Jadhav h/for Mr.Salunkhe B.V; for Petitioner.
Mr.M.G.Patil, APP, for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th September 2022

PC :

1. The Petitioner has challenged the order dated 11th July 2022 passed by Sessions Court, Sangli in Criminal Revision Application No.41 of 2022 and order dated 16th March 2022 passed by learned Chief Judicial Magistrate, Sangli below Exhibit-18 in Summary Criminal Case No.52 of 2021.

2. Petitioner is facing prosecution u/s.138 of Negotiable Instruments Act initiated by respondent no.1 before Court of learned Judicial Magistrate, First Class, Sangli. The complaint is filed alleging that accused had issued cheque no.196212 dated 28th

September 2020 for Rs.12.50 lakh, cheque no.196213 dated 28th September 2020 for Rs.12.50 lakh and cheque no.196214 dated 28th September 2020 for Rs.9.50 lakh in discharge of liability. The cheques were dishonoured on account of endorsement “refer to drawer” and “funds insufficient”. The complainant issued notice of demand and thereafter filed complaint.

3. Examination in chief of complainant was recorded on 4th January 2021. The complainant was cross examined on 5th April 2022 and 15th June 2022.

4. The complainant moved an application u/s.143-A of Negotiable Instruments Act before Trial Court seeking direction to the accused to pay interim compensation to the complainant to the tune of 20% of the amount of cheques. The said application was preferred on 15th January 2022. The application was opposed by advocate for accused by submitting say. It was contended that there was no transaction between complainant and the accused and that accused are not liable to pay any payment to the complainant. Section 143-A is not mandatory.

5. Learned Magistrate vide order dated 16th March 2022 allowed the application and directed the accused to pay interim compensation @ 10% of the dishonoured cheques to the complainant.

6. The Petitioner-accused challenged the aforesaid order by preferring Criminal Revision Application No.41 of 2022 before Court of Sessions. Learned Sessions Judge vide order dated 11th July 2022 directed the Petitioner to pay interim compensation @ 5% of

dishonoured cheque to the complainant instead of 10% stated in order dated 10th March 2022.

7. Learned advocate for Petitioner submitted that both the orders passed by the Court below are required to be set aside. The orders are contrary to law. The Petitioner is not liable to make any payment to the complainant. The Courts below have not given any reason as to why accused was directed to make payment of interim compensation. The discretionary power was vested with the Courts below. The Sessions Court has accepted the error committed by Trial Court but directed the Petitioner to pay compensation @ 5%. The Sessions Court had held that Trial Court has not considered the documents on record as documents related to agreement between both the parties relate to the business transaction and cancellation of agreement. As per cancellation of agreement dated 18th July 2019, amount of Rs.25 lakh was paid to the complainant and said document is notarized and bears signatures of both the parties. Out of Rs.34.50 lakh, Rs.25 lakh was paid to the complainant, which is not considered by the Courts below. Hence, question of making payment towards interim compensation @ 5% of cheque amount does not arise.

8. The affidavit of examination-in-chief of complainant was submitted and he has been cross examined at the instance of accused. Suggestions given in the cross examination at the instance of accused were denied by complainant. Learned Magistrate had noted that amount of dishonoured cheques is Rs.34.50 lakh and directed the accused to pay interim compensation @ 10%. Learned Sessions Judge has reduced it to 5%. Apparently the order of Sessions Court is not challenged at the instance of complainant. The

defense of accused cannot be considered at this stage. I do not find any reason to interfere in the order passed by the Court below. No case is made out to set aside impugned order.

ORDER

- (i) The Criminal Writ Petition No.3245 of 2022 is rejected.

(PRAKASH D. NAIK, J.)

MST