

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 21 OF 2022
WITH
CRIMINAL APPLICATION NO. 24 OF 2022
WITH
CRIMINAL APPLICATION NO. 25 OF 2022

Nikhil Baban Nimbalkar ...Applicant
Versus
State Of Maharashtra And Anr. ...Respondents

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Mr. Rahul S. Kadam, Advocate for the Applicant.

Mr. Sushant S. Prabhune, Advocate for Respondent No.2.

Mr. A. R. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 30th SEPTEMBER, 2022.

PER COURT:

1. The applicant is prosecuted for offence under Section 138 of Negotiable Instruments Act, 1881. The Respondent No.2 in these applications have filed complaints before the Court of learned J.M.F.C. Baramati, which are registered as STC No.278 of 2020, STC No.268 of 2020 and STC No.272 of 2020. The order issuing process for offence under Section 138 of Negotiable Instruments Act, 1881 was passed on 06.03.2020, 28.02.2020 and 28.02.2020 respectively.

2. The complainant in STC No.278 of 2020 has alleged that

there was transaction of sale between complainant and accused. The complainant had sold plot to accused for accused consideration of Rs.6,81,000/- and Sale Deed was executed. The accused gave amount of Rs.19,500/- in cash on date of execution of Sale Deed and balance amount of Rs.6,61,500/- was passed by way of cheque dated 09.01.2020. The cheque was dishonoured on 14.01.2020. The case of complainant in STC No.268 of 2020 is that, plot was sold to accused for Rs.6,69,000/-. Sale Deed was executed and for balance amount of Rs.6,49,500/-. The accused issued cheque, which was dishonoured on 14.01.2020. In STC No.272 of 2020, there was similar transactions. Plot was sold to accused for Rs.6,12,000/-. The accused paid Rs.19,500/- in cash and for balance consideration issued Cheque of Rs.5,92,500. It was dishonoured on 16.09.2020.

3. Learned Advocate for the applicant submitted that, there was transaction of purchase of plot from complainants. The applicant issued cheque No.000047 dated 09.01.2020 for Rs.6,61,500/-, cheque No.000046 dated 09.01.2020 for Rs.6,49,500/- and cheque No.000050 dated 09.01.2020 for Rs.5,92,500/- though the cheque was issued, the applicant and complainant agreed to replace the cheque amount by demand draft. The applicant kept the Demand

Draft ready and was supposed to hand it over to complainant and receive the cheque back from complainant. However, the complainant snatched the demand draft and cheques were not returned. FIR was registered vide C.R. No.142 of 2020 with Baramati Police Station under Sections 384, 386, 323, 504 & 506 of Indian Penal Code and Sections 3(1)(a)(r)(s), 3(2)(va) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and Section 7(1)(d) of Protection of Civil Liberties Act by father of applicant on 14.03.2020. The complainant also deposited the cheques. The amount is already paid to complaint. There is no existing legally enforceable debt. The complainant has abused the process of law.

4. Learned Advocate for the respondent No.2 submitted that the allegations are completely false. The case relates to dishonour of cheques. The cheques were issued in discharge of liability. On account of insufficient funds the cheques were dishonoured. The complainant had unilaterally deposited the Demand Draft in the account of the complainant to enable them to lodge FIR. The applicants had made misleading submissions while granting interim protection vide order dated 14.03.2022. It was urged before this Court that the complainant had played fraud on the trial Court

while obtaining the order of issuing process.

5. The cheques were dated 09.01.2020. Cheques were dishonoured on 14.01.2020. The complaint was filed on 15.02.2020. Process was issued on 06.03.2020. The FIR was registered by father of applicant on 14.03.2020 i.e. after the dishonour of cheques. In the FIR it is alleged that on 03.03.2020, the accused in the FIR, abused the servant of first informant on his caste and refusal to return the cheque. The alleged incidents had occurred on 03.03.2020 and 04.03.2020. The FIR was registered on 13.03.2020. The applicant has raised debatable issues, which cannot be considered at this stage. No case is made out for quashing the proceedings. The issues herein can be urged before the trial Court during trial.

6. Hence, I pass the following order:

ORDER

- i. Criminal Application Nos. 21 of 2022, 24 of 2022 & 25 of 2022 are rejected and disposed off accordingly.
- ii. Interim relief granted vide order dated 14.03.2022 stands vacated.

(PRAKASH D. NAIK, J.)