

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 284 OF 2020

Anant Pandurang Sawant

...Petitioner

Versus

Sunil Kashinath Pendhamkar And Anr.

...Respondents

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Mr. Akhilesh Singh i/by Mr. P. M. Khankar, Advocate for the Petitioner.

Mr. S. R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 18th JULY, 2022.

PER COURT:

1. The Petitioner is prosecuted for offence punishable under Section 138 of Negotiable Instruments Act. The order of process was also challenged before the Court of Sessions by preferring revision application which has been rejected by the Sessions Court.

2. The complaint was filed by Respondent No.1 alleging that the accused had issued the cheques in discharge of liability which was dishonoured. The transactions relates to the agreement executed between the accused and the complainant in December – 2007 in respect to sale of premises for consideration of Rs.16,50,000/-. The complainant paid an amount of Rs.13,90,000/- to the accused. Since the agreement could not be

fulfilled, the complainant demanded the amount. One cheque was issued for an amount of Rs.5,00,000/- and two cheques were issued for an amount of Rs.10,00,000/- each. The cheques were deposited by the complainant which were dishonoured on account of insufficient funds.

3. learned Advocate for the Petitioner submitted that the complaint is not maintainable in law. The complaint does not specify as to whether the cheques were issued in relation to any existing legally enforceable date. Although the complainant has alleged that he had parted an amount of Rs.13,90,000/- to the accused, the cheques were issued for an amount of Rs.25,00,000/-. The accused was compelled to issue such cheques under coercion. It is further submitted that, considering the date of transaction, the contract executed between the parties and the date of filing of complaint it could be said that the cheques were issued in respect to time-barred debt. There was no legally enforceable liability at the time when the cheques were dishonoured. Reliance is placed on the decision of the Karnataka High Court in the case of **R. Parimala Bai V/s. Bhaskar Narasimhaiah 2019 ALL MR (Cri.) Journal 1** and another decision of the Allahabad High Court in the case of **Deepak Kumar & Anr. V/s. State of UP & Anr. 2007 ALL MR (Cri.) Journal 1.**

4. Perused the documents on record. The complaint spelt out the transactions between the complainant and accused. It is also stated that the agreement was executed between the parties and the cheques were issued in relation to the amount parted to the accused. After complying all the procedural safeguards, the complaint was filed and the process was issued by the learned Magistrate. The submission that there is variation in the cheque amount and purported amount parted to the accused cannot be considered at this stage for quashing the proceedings. The complaint makes out the offence under Section 138 of Negotiable Instruments Act. The submission that the cheques were issued in respect to time-barred debt and there was no legally enforceable liability cannot be accepted at this stage. It is pertinent to note that the cheques were issued by the accused. The cheques were deposited during its validity and dishonoured on account of insufficient funds. The complaint has been filed within the limitation prescribed for filing such complaint.

5. Considering these circumstances, no case is made out for quashing and setting aside the order of process and the criminal proceedings.

ORDER

Criminal Writ Petition No.284 of 2020 is dismissed and disposed off accordingly.

(PRAKASH D. NAIK, J.)