

Ghuge

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 144 OF 2022
WITH
CRIMINAL APPLICATION NO.145 OF 2022
WITH
CRIMINAL APPLICATION NO.179 OF 2022
WITH
CRIMINAL APPLICATION NO.189 OF 2022**

Satbir S. Narang and Anr ... Applicants
V/s.
Sanjay Kishin Shahani & Anr. ... Respondents

Mr. Rushabh Vidyarthi a/w Mr. Hakim Salim, Parth
Parikh i/b. Hakim Salim A R for the applicants.

Mr. Sanjay Bhojwani for respondent No.1

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

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 21, 2022

P.C.:

1. Since the facts and the question of law involved in these applications are similar, all are disposed of by the common judgment.

2. According to the complainant, in a proceeding under Section 138 of the Negotiable Instrument Act, 1881 he agreed to invest an amount of Rs.65,10,000/- (Sixty Five Lakh Ten Thousand Only), with the accused-petitioner. According to him the cheques were issued for discharge of the amount which he invested with the accused. He issued demand notices on 24th April, 2019 stating

that amount of Rs.65,10,000/- (Sixty Five Lakh Ten Thousand Only) is due from accused. On 5th June, 2019, accused replied demand notices by contending that he had paid amount of Rs.59,88,000/- (Fifty Nine Lakh Eighty Eight Thousand only) from time to time before date of dishonour of cheque. On 19th June, 2019 the respondent No.1 filed complaints under Section 138 of the Negotiable Instrument Act, 1881. The learned Magistrate rejected application under Section 143(A) of the Negotiable Instrument Act, 1881 holding that the complainant had not approached the court with clean hands; the direction to pay as contemplated under Section 143(A) of N.I. Act, 1881 is discretionary; and considering the conduct of the complainant, the accused need not be directed to pay the amount. Aggrieved thereby complainant filed revision application before the learned District Judge. Learned District Judge quashed the order of Magistrate by directing the accused to pay 20% of the amount of the cheque.

3. Learned advocate for the accused/applicant submitted that it has been consistent stand of the accused that he repaid an amount of Rs. 59,88,000/- (Fifty Nine Thousand Eighty Eight Thousand Only) out of Rs.65,10,000/-(Sixty Five Lakh Ten Thousand Only) and, therefore, there was no legally recoverable liability on the date of dishonour of cheque.

4. *Per-contra*, the learned advocate for the complainant submitted that the amounts shown in the account extract annexed to the applications at Exhibit-(A) are the payments made towards profit of business jointly run by the applicants and the

complainant. He submitted that the quantum of the amount and the dates reflects that the amounts paid to the complainant was towards the profit.

5. On perusal of the orders passed by the learned Magistrate and learned Sessions Judge, it appears that none of the courts have considered rival contentions of the parties in its proper prospective. None of the courts has discussed rival contentions raised by the parties. In the absence of the decision making process and the reasons in support of finding about the percentage of the amount required to be paid under Section 143(A) of the Negotiable Instrument Act, 1881, the superior court has no advantage of scrutinizing reasons assigned for arriving at a finding in relation to Section 143(A) of N.I. Act, 1881. In the absence of reasons demonstrating application of mind, it is necessary in the interest of justice that the proceedings be remanded back to the learned Magistrate for fresh disposal in accordance with law to consider rival contentions raised by the both the parties. Hence, following order :-

- a) The proceedings are remanded back to the learned 2nd Joint Judicial Magistrate First class, Cantonment Court, Pune for disposal in accordance with law.
- b) Considering the facts of the case the learned 2nd Joint Judicial Magistrate First Class, Cantonment Court, Pune is requested to decide the applications within Four (4) weeks from the date of appearance of the parties.
- c) Parties shall appear before the learned 2nd Joint

Judicial Magistrate First Class, Cantonment Court, Pune on
3rd January, 2023.

6. The writ petitions are disposed of in the above terms. No costs.

(AMIT BORKAR, J.)