

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

WRIT PETITION NO.3475 OF 2019

M/s Auro Engineering And Consultancy
Through Vishnu Veeramuhu Parmashivam ... Petitioner
Vs.
The State of Maharashtra And Ors. ... Respondents

Mr. Subhradeep Banerjee i/b Mr. Jayswal J. Omprakash, for Petitioner.
Mr. K. V. Saste, APP for Respondent No.1.

CORAM : S.M. MODAK J.

DATE : 13th April, 2022

P.C. :

1. Heard Mr. Subhradeep Banerjee, the learned Advocate for the Petitioner/Original complainant. The Petitioner is a proprietor of M/s Auro Engineering and Consultancy. They are challenging the order dated 9th April, 2019 passed by Additional Sessions Judge, Dindoshi, Mumbai in Criminal Revision Application No. 69 of 2018. The said revision was preferred by original Accused Nos.1 and 2, who are Respondent Nos. 2 and 3 in this Writ Petition.

2. The present Petitioner has filed the complaint for the offence punishable under Section 138 of Negotiable Instrument Act, before the Court of Metropolitan Magistrate, Mumbai. It was filed due to non-payment of cheque amount of Rs. 20 Lakhs issued by the

accused persons. Complainant claimed that he and Accused No.1 were the partners having a partnership firm by name M/s Auro Engineering and Consultancy. There was a deed of retirement executed on 15th October, 2016. Copy is filed at page No.22 of the petition. The Accused No.1 has agreed to retire from the partnership and the complainant has decided to continue the business. Complainant claims that when the partnership business was going on, the accused has paid the profit share to the complainant. However, thereafter he has avoided to pay the share in profit. It is argued that in fact the Accused has not paid the share in the profit.

3. The learned Additional Sessions Judge finds the averments of the complaint are not supported by the averments of the deed of the retirement. In para No.3 of the complaint, the complainant has averred about the deed of retirement and avoidance by the Accused to return business profit to the complainant. Whereas in Para No.4 of the complaint, the complainant has averred that after several request the Accused has issued a cheque for Rs.20 Lakhs to the complainant and promised that the said cheque will be honoured at the time of presentation in bank. But the cheque was dishonoured, for the reason 'Payment stopped by Drawer'. The complainant issued a mandatory notice and it was replied by the Accused persons. As there was failure

to pay the cheque amount hence complaint was filed. The learned Magistrate on being satisfied that there is a sufficient ground and passed an Order of issue of process against the Respondents on 1st November, 2017.

4. The Accused persons have preferred a revision mainly on two grounds:-

- i) The deed of retirement does not support the case pleaded by the complainant in the complaint.
- ii) The cheque was stolen.

5. The Learned Additional Sessions Judge has not opined on the theory of theft of cheque, but he has only commented on the case of the complainant on one hand and the documents filed by the complainant on the other hand. Before this Court it is contended that there was a limited scope of inquiry before Revisional Court and the Revisional Court has lost sight of the presumption required to be drawn under the provisions of Section 139 of NI Act. In support of his contention he has relied upon the judgment in the case of ***Kalamani Tex and Anr. Vs. P. Balasubramanian***¹ and ***Sripati Singh (since deceased) Through His Sone Gaurav Singh Vs. State of Jharkhand and Anr.***² In Para No.13 of Kalamani case, Hon'ble Supreme Court has

1 (2021) 5 Supreme Court Cases 283

2 2021 SCC Online SC 1002

emphasized on the statutory presumption under Sections 118 and 139 of NI Act. The appeal against conviction was dismissed. Whereas in the case of Shri. Sripati Singh, the Hon'ble Supreme Court has dealt with a defense taken by the Accused that cheque was issued for security and not towards discharge of liability. This observation are in para No.17 of the said complaint.

6. It is true that the scope before Revisional Court is limited. The Revisional court has to deal with the correctness of the order of issue of process. At that stage the Accused can only point out what are the lacunaes, defects in the case of complainant and in his documents. When the reasons given by Learned Additional Sessions Judge are perused, this Court feels that there is no reason to interfere in the said order. In order to verify, whether the impugned order is correct or not, this Court has read the averments in the complaint and the documents filed by the complainant with the assistance of learned advocate for the Petitioner. It is true that in para No.3 of the complaint, there is a reference of execution of deed of retirement. There is also reference that accused has neglected to return business profit. In para No.4 there is reference of issuance of cheque. On this background when the deed of retirement is perused, the averments are not supporting the case of the complainant but in fact they are otherwise. The Accused was a

retiring partner and complainant was a continuing partner. Para No.3 of the deed mentions that the continuing party has to pay the agreed amount to the retiring partner. Para No.9 is more important, it says that now there will not be an outstanding in between the parties.

7. The Additional Sessions Judge, has considered this aspects in para No.15 of the said judgment. Ratio laid down in above judgments is not applicable to present case as facts are different. For the above reasons, this Court did not find any reason to interfere in the order. This Court feels that even there is no need to issue notice. Hence the Writ Petition is dismissed.

(S.M. MODAK, J.)