

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

CRIMINAL WRIT PETITION NO.4190 OF 2021

Gulab Mangilal Oza Petitioner
Versus
Mangesh Sudam Beldare
and another Respondents

Mr. Saurabh Butala, Advocate i/b. Harshad Sathe, for the
Petitioner.

Mr. Ganesh Bhujbal, Advocate for Respondent No.1

Mr. R.M. Pethe, APP, for Respondent No.2-State.

CORAM : SARANG V. KOTWAL, J.
DATE : 4th AUGUST, 2022

P.C. :

1. This Petition is filed for quashing of the impugned order dated 1.8.2019 passed by the 29th Jt. Civil Judge, Senior Division and J.M.F.C. Court No.4, Pune issuing process against the petitioner and others under Section 138 read with Sections 141 and 142 of the Negotiable Instruments Act (for short, 'N.I. Act') as well as the order dated 5.7.2021 passed by the Additional Sessions Judge, Pune in Revision Application No.26/2020 whereby the

Revision Application challenging the order of issuance of process was rejected.

2. Heard Shri Saurabh Butala, learned counsel for the Petitioner, Shri Ganesh Bhujbal, learned counsel for Respondent No.1 and Shri R.M. Pethe, learned APP for Respondent No.2-State.

3. The complaint is lodged by the respondent No.1 against three accused. First accused was M/s. Krishna Developers, which was a registered Partnership Firm, accused No.2 was Shri Mangilal Oza, who is husband of the present petitioner and the third accused is the present petitioner herself. The case of the complainant is that the present petitioner and the original accused No.2 were the Partners of the Partnership Firm i.e. accused No.1 and they are looking after the day to day affairs of the Firm and they are responsible for the same. The complainant i.e. respondent No.1 herein paid Rs.20 Lakhs to the accused for purchasing Flat No.14, Wing "C-II", Krishna Residency in the building standing on Gat No.543, village Urali Kanchan,

Taluka-Haveli, District-Pune. For that, accused No.1 firm issued receipt No.1332 dated 22.9.2013. After that, no further steps were taken by the accused to transfer the flat in the name of the complainant and even possession was not given. In April, 2019 the complainant came to know that the same flat was sold to a third person vide registered sale deed dated 20.11.2013. On repeated enquiries by the complainant, a cheque bearing No.002982 dated 4.5.2019 for Rs.20 Lakhs issued on the account maintained by the Cosmos Co-operative Bank Limited, Branch Sarhad High School, Pune maintained in the name of the accused No.1 Partnership Firm signed by the present applicant and the original accused No.2 as Partners was given to the complainant. It was deposited by the complainant in his bank i.e. the Cosmos Co-operative Bank Limited, branch Ambegaon Budruk, District-Pune. It was dishonored on the ground that the funds were insufficient and the drawer signature was different. The complainant sent a statutory notice dated 14.5.2019 demanding amount of the cheque.

The notice was received on 15.5.2019, but, payment was not paid and, therefore, the complaint was filed. Learned Magistrate took cognizance and issued process on 1.8.2019. It was challenged in a Revision Application which was also rejected as mentioned earlier.

4. Learned counsel for the applicant submitted that the transaction was from the year 2013 at which point of time the present applicant was not a Partner of the firm. The sale deed as well as the power of attorney executed in respect of the transaction of sale of that particular flat bears signature of one Yashwant Dhankawade. It shows that the applicant has nothing to do with the transaction.

5. However, learned counsel for respondent No.1 pointed out the observations in the order passed by the Sessions Court that this issue was considered by the revisional court and it was observed that the present petitioner became Partner of accused No.1 Firm from 28.12.2015. The cheque was dishonored in the year 2019 when the petitioner was very much a Partner of the

Partnership Firm. In view of this, all the ingredients of Section 138 read with Section 141 of the N.I.Act are made out. There are sufficient necessary averments in the complaint. The petitioner's role is specifically mentioned in the complaint. Therefore, no case for any interference is made out. The Writ Petition is dismissed.

(SARANG V. KOTWAL, J.)

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by
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PRAKASHRAO
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