IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3715 OF 2021
WITH
CRIMINAL WRIT PETITION NO. 3753 OF 2021

Chaitanya Nandlal Parekh ...Petitioner
Versus
1. The State of Maharashtra
2. Jaideep Vallabhdas Thakkar ...Respondents

Mr. K. Parmeshwaran a/w Mr. Nitin Lonkar, Rakesh Sawant, Shamiana H. Vijay Ghedia i/b Monarch Legal Advocates for the Petitioner.

Mrs. P.P.Shinde, A.P.P for the Respondent-State.

Ms. Krupali Rajani for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.
DATE : 27th JANUARY, 2022
(Through Video Conferencing)

P.C. :

1. Heard learned Counsel for the parties.

2. Since the issues involved in both the aforesaid petitions are identical, both the petitions are being decided by a common order.

3. The substantive prayers in both the petitions are identical. However, only the prayer clauses in petition No. 3715 of 2021 is being reproduced hereinunder;

> *"(a) That this Hon'ble Court be pleased to issue appropriate Writ, Order or Direction calling upon the records and proceedings of the Complaint Case No. 4719/SS/2021 and after going through the validity and proprietary of the subject Complaint proceedings, be pleased to quash and set aside the same.*
> *(b) That his Hon'ble Court be pleased to issue appropriate Writ, Order or Direction calling upon the records and proceedings of the Complaint Case No. 4719/SS/2021 and after going through the validity and proprietary of the order dated 06/08/2021 and 10/08/2021 directing the Petitioners to pre-deposit 20% of the cheque amount at Exhibits O and P respectively hereto, be pleased to quash and set aside the same."*

4. Mr. Parmeshwaran, learned Counsel for the petitioner submits that the criminal complaints filed by the respondent No.2 herein (original complainant) in the Court of the learned Additional Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai, alleging an offence punishable under Section 138 of the Negotiable Instruments Act, were clearly not maintainable in law. He submits that having regard to the transaction and the fiduciary relations between the parties i.e. of an Advocate and client, the learned Trial Court ought not to have entertained the complaint. Learned Counsel for the petitioner further submits that a perusal of the letters sent by the respondent No.2/complainant would reveal

that the respondent No.2 had violated Rules 23 and 24 of the Standards of Professional Conduct and Etiquette to be observed by the Advocates, by asking for interest on the fees. Learned Counsel further relied on the letters/correspondence between the petitioner and the respondent No.2 which are on page Nos. 66, 70, 72, 78, 82, 90, 92 and 96 of the petition i.e. petition No.3715 of 2021. Learned Counsel in support of his submissions also relied on the judgment of the Apex Court in the case of ***B. Sunitha V/s. State of Telangana and Another***[1] in particular, para Nos. 12,14,16 and 17 of the said judgment.

5. Learned Counsel for the petitioner further submits that the criminal complaint filed by the respondent No.2 ought not to have been entertained by the Trial Court, inasmuch as, the respondent No.2 had committed professional misconduct. He submits that the petitioner had also filed a police complaint with the Rabodi Police Station, Thane, alleging that he was coerced, forced and threatened to sign the said letters, prepared by the respondent No.2 and give cheques, pursuant thereto. According to the learned Counsel, the letters signed by the petitioner on which heavy reliance is placed by the learned Counsel for the respondent No.2, were infact, drafted by the respondent No.2 and that the same has

1 (2018) 1 Supreme Court Cases 638

been admitted by the respondent No.2 in the letter dated 1st July, 2021, sent by the respondent No.2 to the Police i.e. Rabodi Police Station, Thane. Learned Counsel in support thereof, relied on the said letter dated 1st July, 2021 to the Senior Inspector of Police, Rabodi Police Station, Thane, in particular, para 14 and 41 of the said letter. Learned Counsel for the petitioner further submits that in this light of the matter unless an independent contract is proved between the petitioner and the respondent No.2, there will be no presumption under Section 138 of the Negotiable Instruments Act. He submits that seeking interest on the professional fees was also clearly a breach and abuse of the fiduciary relationship between the parties, warranting quashing of the complaints.

6. As far as the order passed by the Trial Court under Section 143-A of the Negotiable Instruments Act, directing the petitioner to deposit 20% of the cheque amount is concerned, Mr. Parmeshwaran, learned Counsel for the petitioner submits that the said order is not a reasoned order and that the said provision ought not to have been invoked by the Trial Court, being discretionary in nature having regard to the facts of this case.

7. Ms. Rajani, learned Counsel appearing for the respondent No.2 vehemently opposes the petitions/grant of any interim/ad-interim relief.

She submitted that the aforesaid petitions were not maintainable, inasmuch as, the plea of the petitioner has been recorded in both the cases on 18th August, 2021. She further submits that the Trial Court has passed an order of no cross dated 10th December, 2021 and that the said order has not been challenged by the petitioner, till date. Learned Counsel also relied on the judgment of the Apex Court in the case of ***Subramanium Sethuraman V/s. The State of Maharashtra***[2]. She submits that having regard to the same, both the petitions being devoid of merits, be dismissed.

8. As far as letters/exchange of correspondence are concerned, learned Counsel for the respondent No.2 submits that the letters/e-mails/correspondence between the parties i.e. the petitioner and the respondent No.2 clearly show that the petitioner was to pay a sum of rupees 3 Crores and odd towards professional fees to the respondent No.2, for the services rendered by the respondent No.2 to the petitioner, for about 4-5 years, prior to 2018. She submits that the respondent No.2 had, in the correspondence, set out in detail, the fees to be paid by the petitioner for the services rendered by the respondent No.2, from time to time. She submits that infact, the petitioner had also accepted the payment to be made by him to the respondent No.2 towards professional fees. She further

2 2004 volume 13 SCC 324

submits that infact, when the respondent No.2 sent the first notice dated 3rd October, 2019, after certain cheques given by the petitioner were disnonoured, the petitioner replied to the said notice and admitted his liability and sought some more time to make the payment. She submits that pursuant thereto, the respondent No.2 did not act or file any complaint. She submits that infact, the petitioner replaced the said dishonoured cheques by three other cheques. She submits that the respondent No.2 did not file a complaint, as the petitioner had made part payment of about Rs.80,00,000/- to the respondent No.2 partly by Demand Draft and partly by NEFT and had sought additional time to make payment and had pursuant thereto, issued three fresh post-dated cheques. She submits that all the three cheques, out of which, two cheques, which are the subject matter of the aforesaid petitions were again dishonoured i.e. issued for a sum of Rs.2.55 Crores and Rs.25 lakhs.

9. Ms. Rajani further submits that throughout in the correspondence, the petitioner has accepted his liability to pay professional fees to the respondent No.2. Learned Counsel submits that, however, for the first time, after the cheques which are the subject matter of these petitions, were dishonoured, the petitioner took up a false defence that he was coerced, forced and threatened by the respondent No.2, to issue the

said cheques. She submits that although the cheques were issued sometime in February, 2021, (one cheque having been replaced in March, 2021), the petitioner filed a complaint with the Rabodi Police Station, Thane, only in May, 2021 alleging therein, that he was coerced, forced and threatened by the respondent No.2 to issue the said cheques. She further submits that the Police, after conducting a detailed inquiry of the said complaint, filed a report stating therein, that there was no substance in the complaint made by the petitioner and as such, filed the said complaint. Learned Counsel relied on the complaint which is at page 327 of Petition No. 3715 of 2021. She submits that the submissions advanced by the learned Counsel for the petitioner that the petitioner was coerced, threatened and forced to sign the letters admitting his liability was clearly an afterthought and is the defence of the petitioner which cannot be gone into at this stage. Learned Counsel has tendered a compilation of judgments in support of the said submissions.

10. Learned Counsel for the respondent No.2 further submits that the judgment of the Apex Court in ***B. Sunitha (supra)*** was clearly distinguishable and would not apply to the facts of the case. She submits that the facts in question, in both the complaints show that the cheques were issued by the respondent No.2 towards a legally enforceable debt and

as such, the provisions of the Negotiable Instruments Act were clearly applicable.

11. As far as the order of deposit, passed by the Trial Court directing the petitioner to deposit 20% of the cheque amount is concerned, learned Counsel for the respondent No.2 submits that no interference was warranted in the same. Learned Counsel does not dispute the fact that the said relief is a discretionary relief, however, she submits that in the facts, no fault can be found in the impugned order directing the petitioner to deposit 20% of the cheque amount. She submits that detailed reasons were not required to be given by the Trial Court whilst directing the said deposit, inasmuch as, the Trial Court had applied its mind while issuing process as against the petitioner.

12. Just before the commencement of the hearing of these petitions, learned Counsel for the respondent No.2 tendered affidavit in replies of the respondent No.2, in both the aforesaid petitions. The same were taken on record. Learned Counsel for the respondent No.2 states that copies thereof, were already served on the learned Counsel for the petitioner. The same is not disputed by the learned Counsel for the petitioner.

13. Perused the papers including the complaints filed by the respondent No.2, the correspondence exchanged between the parties and the impugned orders dated 6th August, 2021 and 10th August, 2021 passed by the Trial Court directing the petitioner to pre-deposit 20% of the cheque amount.

14. As far as the first submission of the learned Counsel for the petitioner that the cheques in question and the letters written by the petitioner were at the behest of the respondent No.2 and that the petitioner was coerced, forced and threatened to sign the said letters and issue cheques, *prima facie*, the same appears to be an afterthought. Although, learned Counsel for the petitioner submits that the said fact, has also been admitted by the respondent No.2 in his letter dated 1st July, 2021 sent to the Police of the Rabodi Police Station, Thane, it is pertinent to note, the contents of the said letter sent and the earlier correspondence that was exchanged between the parties. Para 14 of the said letter dated 1st July, 2021, which is at page 177 of Writ Petition No. 3715 of 2021 shows that the respondent No.2 had informed the Police that the petitioner with folded hands had asked the respondent No.2 to sit and prepare the accounts and finalize exact amount of fees due and payable by him; that accordingly

with the consultation of the petitioner, an amount of Rs.3.60 Crores was arrived at as the final fees to be paid by the petitioner towards professional and legal charges purely, to which, the petitioner agreed. Accordingly, the draft letter was prepared mentioning all the work done by the respondent No.2 and the payment agreed by the petitioner and sent to the petitioner on e-mail dated 10th July, 2018; thereafter, the petitioner got the print of the said letter on his letterhead and came with post-dated cheques of Rs.90,00,000/- each and issued four cheques dated 30th November, 2018 alongwith the letter. The correspondence of 2018 exchanged between the parties i.e. the petitioner and the respondent No.2 reveals that the petitioner had requested the respondent No.2 for time to make payment of professional fees and had accepted his legal liability towards respondent No.2 for rendering legal and professional services.

15. It appears, that the respondent No.2 had rendered his professional services to the petitioner for about 4-5 years prior to 2018 till the statutory notices were issued to the petitioner. According to the respondent No.2, the petitioner was under a legal obligation to pay a sum of Rs. 3,60,00,000/- towards professional fees, to the respondent No.2 and that the said liability was confirmed by the petitioner, by agreeing and undertaking to pay the respondent No.2. The same is spelt out in the letter

dated 16th July, 2018. It appears that vide the said letter dated 16th July, 2018 issued by the petitioner to the respondent No.2, the petitioner had issued four cheques (drawn on Oriental Bank of Commerce, Thane) worth Rs.90,00,000/- each dated 30th November, 2018 i.e. making up a total amount of Rs.3,60,00,000/- in favour of the respondent No.2. Alongwith the said letter dated 16th July, 2018, the petitioner had given the details of the legal services rendered by the respondent No.2 to the petitioner. It appears that thereafter, the petitioner requested the respondent No.2 not to deposit the aforesaid four cheques on the due dates and once again issued a letter dated 31st January, 2019 and again replaced the four cheques by another four cheques (drawn on Oriental Bank of Commerce) dated 30th April, 2019 for a sum of Rs.90,00,000/- each (totaling Rs.3,60,00,000/-). It appears that once again the petitioner requested the respondent No.2 not to deposit the said four cheques dated 30th April, 2019 and again issued another letter dated 18th July, 2019 and replaced the said cheques by four other cheques (drawn on Oriental Bank of Commerce) for Rs.90,00,000/- each. It is the respondent No.2's case that as the petitioner was unable to arrange the funds for payment of the fees as per the letter and requested for more time, the respondent No.2 allowed the said cheques to be replaced voluntarily.

16. It appears that again vide letters dated 16th July, 2018, 31/01/2019 & 18/07/2019, the petitioner requested for time and replaced the cheques from time to time. By the said letters, the petitioner once again confirmed his liability. It appears that the respondent No.2 deposited four cheques dated 30th April, 2019, however, the same were dishonoured with the remark "Funds insufficient". Pursuant thereto, the respondent No.2 issued a Notice of Demand on 3rd October, 2019. According to the respondent No.2, the petitioner, by his reply dated 17th October, 2019 admitted his liability and agreed to make the payment of Rs.3,60,00,000/- to the respondent No.2 by issuing fresh cheques. It appears that the petitioner transferred a sum of Rs.15,00,000/- by Demand Draft and by NEFT to the respondent No.2 and issued post-dated cheques for an amount of Rs.3,45,00,000/- dated 15th February, 2020. According to the respondent No.2, once again the petitioner admitted his liability and undertook to honour the said cheques. Infact, the petitioner requested the respondent No.2 not to take any action under Section 138 of the Negotiable Instruments Act.

17. Considering the relations and the fact that the petitioner had made part payment of Rs.15,00,000/- and issued a cheque of Rs.3,45,00,000/- dated 15th February, 2020, the complainant did not take

any action as against the petitioner by filing a complaint. It appears that again out of total liability of Rs.3,45,00,000/-, the petitioner again made a payment of Rs.40,00,000/- by Demand Draft and as such, the balance amount due and payable was Rs.3,05,00,000/-. According to the respondent No.2, the petitioner vide letter dated 6th December, 2020 again requested the respondent No.2 to allow him to make payment of balance amount of Rs.3,05,00,000/- by 15th May, 2020 and accordingly, issued another cheque dated 15th May, 2020 for an amount of Rs.3,05,00,000/- in respondent No.2's favour. It appears that since the petitioner had made part payment and issued cheques for the remaining amount, the respondent No.2 did not act on the earlier cheques and accepted the cheques dated 15th May, 2020 for an amount of Rs.3,05,00,000/-.

18. It appears that due to COVID-19 and due to the lockdown, the petitioner again called respondent No.2 on 3rd May, 2020 and requested not to deposit the cheque for a sum of Rs.3,05,00,000/- and sought further time and replaced the said cheque by fresh cheque. According to the respondent No.2, having regard to the lockdown and request made by the petitioner, the respondent No.2 did not deposit the said cheque and granted the petitioner further time to make the payment. The petitioner again sought further time from the respondent No.2. According to the respondent No.2,

the petitioner vide letter dated 5th August, 2020, once again accepted his liability and issued a fresh cheque dated 15th December, 2020.

19. It appears that the respondent No.2 accepted the said cheque in lieu of the earlier cheque and granted time to the petitioner upto 15th December, 2020, having regard to the lockdown. According to the respondent No.2, on many occasions, the petitioner sought time to make payment and replaced the cheques voluntarily, thus, confirming his liability. It is further alleged by the respondent No.2 that in the second week of December, 2020, the petitioner again requested him not to deposit cheque dated 15th December, 2020 for a sum of Rs.3,05,00,000/- and promised to make payment of Rs.25,00,000/- on 18th December, 2020. Accordingly, the petitioner again made part payment of Rs.25,00,000/- on 18th December, 2020 by NEFT and requested the respondent No.2 to grant him some time to make the balance payment of Rs.2,80,00,000/-. According to the respondent No.2, the petitioner voluntarily undertook to make payments and had accepted the legally enforceable debt and liability, to make the said payment to the respondent No.2. According to the respondent No.2, some time in February, 2021, the petitioner again requested him to grant sometime for making payments and in the meeting represented that he would make payment of Rs.2,80,00,000/- up to May,

2021 and agreed to issue two cheques towards the same. The respondent No.2 in his complaint has stated that the petitioner *suo moto* agreed to pay even the interest on the said amount. Accordingly, the petitioner issued two cheques for the balance principal liability of Rs.2,80,00,000/- as well as another cheque towards interest. The cheque dated 25th March, 2021 for Rs.25,00,000/- and a cheque dated 30th May, 2021 for Rs.2,55,00,000/- (both the said cheques were dishonoured and are subject matter of the aforesaid petitions). Pursuant to thereto, two legal notices were sent to the petitioner dated 12th April, 2021 and 7th June, 2021. The said notices were replied by the petitioner through his Advocate. It appears that the petitioner had through his Advocate replied that the respondent No.2 had taken undue advantage of the situation and his position and had exploited the petitioner. It was also alleged in the said reply that under the guise of fees, respondent No.2 had induced the petitioner to sign multiple documents and issue post-dated cheques on various dates, against his wish. It appears that on 4th May, 2021, the petitioner even made a complaint to the Inspector In-charge of Rabodi Police Station, Thane, praying therein, that an FIR be registered as against the respondent No.2. In the said complaint filed by the petitioner against the respondent No.2, it is alleged that the documents were prepared by the respondent No.2 in his office and that he had signed the said letters admitting his liability and had issued the cheques, under coercion and threats. It is a matter of record that the respondent No.2 had given a detailed reply/statement to the Police with respect to the allegations made by the petitioner. The police after conducting a detailed inquiry, filed the petitioner's complaint, as no substance was found in the petitioner's complaint. Learned Counsel for the petitioner relied on para Nos.14 and 41 of the reply sent by the respondent No.2 to the Police. The said paragraphs read thus:-

> *14. I say that on getting this information I called mr. Chaitanya N. Parekh & confronted him about these aspects in presence of my Advocate staff Mr. Ramhari Dhayarkar and Mr. Samrat Thakkar, wherein he confessed that since a lot of money had become due & Payable he had no adjustment or money to pay therefore, he made me to book another 4 flats and got the payment of Rs.40 lacs issued in the name of the company & as against this he issued 4 allotment letters in respect of flat No.A 303, Flat No.A-503, Flat No.A-1001, Flat No. A-1002 & thereafter he had to sell those flats to other purchasers, he kept on replacing the same by showing fresh allotment letters in lieu of earlier allotment letters. At that time, he with folded hands asked me to sit and prepare the accounts and finalise the exact amount of fees that would be due and payable by him. Accordingly, in this consultation, in the presence of my above staff and son, an amount of Rs.3.60 Crores was arrived at the final figure to be paid by him towards legal and professional charges purely, to which, he agreed, he further informed that my payment of Rs.50 lacs paid to Luxora Realtors Pvt.Ltd.will be treated as advance against the flats and I will have to deal with the company separately and the aspects of legal and professional, fees would be dealt with and paid by him separately.* ***I say that accordingly, I prepared a draft letter thereby mentioned all the work done by me and the payment agreed by Mr. Chaitanya N. Parekh & sent it to Mr. Chaitanya N. Parekh on E-mail dated 10/07/2018, thereafter, Mr. Chaitanya N. Parekh got the print***

of the said letters on his letterhead and came with four post-dated cheques of Rs.90 lacs each and issued me four cheques dated 30/11/2018 alongwith the said letter.

41. I say that Mr. Chaitanay N. Parekh has falsely alleged in complaint as well as in his reply that I have obtained his signature on various documents and have not handed over him copies thereof, I would like to place it on record that, Mr. Chaitanya N. Parekh is an educated person, conversant with English and all other language and at no point of time, he has signed any documents without reading or making correction and without taking copies of the same, many of the letters he himself has corrected the draft prepared by me, he has copies of all the documents which he has issued to me either under his signature or under the signature of his partner."

20. It is the defence of the petitioner that he was coerced, forced or threatened to sign the letters and was compelled to hand over the cheques. Whether or not, the petitioner was coerced, forced or threatened to sign the letters/cheques, is a matter which will be decided by the Trial Court, at the time of trial. The same cannot be gone into in writ jurisdiction.

21. As far as the judgment in the case of ***B.Sunitha (supra)*** relied upon by the learned Counsel for the petitioner is concerned, the said case is clearly distinguishable. In the said case, the Advocate had claimed fees on contingent basis i.e. claim based on percentage of subject matter/expected decretal amount in litigation. In this context, the Apex Court held that the contingent fee claim cannot be the basis of a complaint by an Advocate

under Section 138 of the Negotiable Instruments Act and that in any case, contingent fee claim was professional misconduct and against public policy. It was further observed that if the liability was disputed, the Advocate has to independently prove contract. As far as the present case is concerned, the facts *prima facie* reveal, that the petitioner had admitted his liability to pay, as it evident from the correspondence/e-mails exchanged between the parties.

22. As far as the direction of the Trial Court to make a pre-deposit of 20% of the total amount is concerned, in the facts, no infirmity can be found in the said order. Vide order dated 22nd December, 2021, this Court had recorded the statement of the learned Counsel for the petitioner on instructions of the petitioner that an amount of Rs. 25,00,000/- will be deposited before the Magistrate within three weeks and in view of the same, stayed the order of attachment till the next date. It is not in dispute that the said amount has been deposited by the petitioner. As per the impugned orders dated 6th and 10th August, 2021, the total amount in both the cases which petitioner is required to deposit is, about Rs.36,00,000/-, out of which, the petitioner has already deposited Rs.25,00,000/-. This Court has infact, also expedited the trial vide order dated 10th December, 2021. Since no infirmity is found in the impugned order directing the

petitioner to deposit 20% of the cheque balance amount, no interference is warranted in the same. The time to deposit the balance amount of Rs.31,00,000/- is extended by six weeks from today.

23. Both the petitions are disposed of on the aforesaid terms.

24. It is made clear that the observations made herein are prima facie, and the learned Judge shall decide the case on its own merits, uninfluenced by the observations made in the aforesaid order.

25. All parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.