IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4742 OF 2018

Surendra Mor ... Petitioner
versus
The State of Maharashtra and another ... Respondents

Mr.Kushal More, Advocate for petitioner.
Mr.A.R.Patil, APP, for State.
Mr.Pradnyesh Sabnis, Advocate for respondent no.2.

CORAM : PRAKASH D. NAIK, J.

DATE : 5th September 2022

PC :

1. The petitioner has challenged the order dated 21st July 2011 passed by Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Mumbai dismissing the complaint preferred by petitioner before the Court of Additional Chief Metropolitan Magistrate.

2. The case of petitioner-complainant is that he has shared cordial and business relationship with accused since several years. Some where in 1997, the accused was in financial difficulty. He approached complainant to grant him loan of Rs.5 lakh and due to cordial relationship, the complainant advanced friendly loan of Rs.5 lakh. The complainant issued cheque of Rs.5 lakh in favour of accused. The loan was to be repaid by the accused within a span of five years. The accused failed to repay loan till the year 2002. The complainant requested the accused to repay the amount. In July-2010 accused handed over cheque bearing No.995444 dated 10th

July 2010 in the sum of Rs.5 lakh. The cheque was dishonoured on 16th July 2010. The complainant learnt that the cheque was signed by one Mr.Oommen and not by accused. The account from which the cheque was issued also belonged to Mr.Oommen. Hence the complainant could not enforce provisions of Negotiable Instruments Act. The accused refused to repay the loan amount to the complainant. The complainant addressed the legal notice dated 24th July 2010 to accused demanding money. Private complaint was filed against respondent no.2 for offence under Section 420 of Indian Penal Code.

3. The learned Magistrate vide order dated 21st July 2011 dismissed the complaint on the ground that no prima facie case was found from material on record for taking cognizance

4. Learned advocate for petitioner submits that on account of representations made by accused, loan of Rs.5 lakh was provided to him. In spite of repeated demands the loan was not repaid and subsequently the accused has deliberately handed over the cheque which was issued from the account of some other person, thereby accused has cheated the complainant. The complainant was induced to part with amount of Rs.5 lakh on the false promise that it would be returned. The act of accused has resulted in loss to the complainant. Learned Magistrate ought not to have dismissed the complaint. The averments in the complaint makes out the offence of cheating. The complaint was dismissed at preliminary stage. The learned Magistrate ought to have directed inquiry under Section 202 of Cr.P.C. The order is erroneous and deserves to be set aside.

5. Learned advocate for respondent no.2 submits that petition is not maintainable. The impugned order could have been challenged by preferring revision application. It was final order. The revision application was maintainable in law. Since the revision was time barred, to avoid exercising revisional jurisdiction on account of delay, the petitioner has preferred writ petition before this Court without invoking revisional jurisdiction. The impugned order was passed on 21st July 2011. For a period of 11 years there was no challenge to the said order. In respect to the another cheque, the complainant had filed another complaint alleging offence u/s.138 of Negotiable Instruments Act. The said proceedings were challenged before this Court by preferring Writ Petition No.707 of 2018. The said petition was disposed off by order dated 17th September 2019. The statement was made by learned advocate representing complainant that complaint which was under challenge in the said petition will be withdrawn. On the said statement the petition was withdrawn. Learned advocate relied upon decision of Hon'ble Supreme Court in the case of **Commissioner of Income Tax and others Vs. Chhabil Dass Agarwal**[1].

6. From the allegations made in the complaint the grievance of the complainant is that the loan was advanced to the complainant and subsequently towards repayment, cheque of Rs.5 lakh was handed over. It was dishonoured. Learned Magistrate by order dated 21st July 2011 has observed that cheque was signed by one Oommen Ninnan, whereas it is the say of the complainant that the cheque was issued by accused (respondent no.2). The complainant is qualified person and it is impossible to believe that he was under impression that cheque was issued by the accused. The cheque was dishonoured

1 (2014)1-SCC-603

due to insufficient funds. The complainant was not concerned with Oommen Ninnan. It is not clear as to why he accepted the cheque from accused.

7. It is pertinent to note that impugned order was passed on 21st July 2011 and the petitioner had moved before this Court in 2018. The complainant has filed another complaint before the Court of Magistrate, which was numbered as CC No.1495/SS/2016 in respect to cheque No.995443 issued by Oommen Ninnan for offence u/s.138 of Negotiable Instruments Act. The complainant had alleged that cheque was issued by respondent no.2 for repayment of loan. The said cheque was for amount of Rs.4,50,000/-. The respondent no.2 was impleaded as accused. The process was issued in the said complaint which was challenged by respondent no.2 before this Court by preferring Writ Petition No.707 of 2018. During the course of hearing of writ petition statement was made on behalf of complainant that said complaint would be withdrawn. This petition is pending in this Court since 2018. I do not find any infirmity in the impugned order. The cheque was issued by Mr.Oomen. The drawer of the cheque had no transaction with petitioner.

ORDER

(i) Criminal Writ Petition No.4742 of 2018 is dismissed and disposed off.

(PRAKASH D. NAIK, J.)

MST