

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL REVISION APPLICATION NO. 62 OF 2020

Ghanshyam Giridhar Popat Vs. Samadhan Marketing & Marchandise Pvt Ltd & ors
AND

CRIMINAL REVISION APPLICATION NO. 63 OF 2020

Heena Dayalal Popat Vs. Samadhan Marketing & Marchandise Pvt Ltd and others
AND

CRIMINAL REVISION APPLICATION NO. 64 OF 2020

Karthik Nandlal Popat Vs. Samadhan Marketing & Marchandise Pvt Ltd and others
AND

CRIMINAL REVISION APPLICATION NO. 65 OF 2020

Hansa Nandlal Popat Vs. Samadhan Marketing & Marchandise Pvt Ltd and others
AND

CRIMINAL REVISION APPLICATION NO. 66 OF 2020

Heena Dayalal Popat Vs. Samadhan Marketing & Marchandise Pvt Ltd and others
AND

CRIMINAL REVISION APPLICATION NO. 67 OF 2020

Karthik Nandlal Popat Vs. Samadhan Marketing & Marchandise Pvt Ltd and others
AND

CRIMINAL REVISION APPLICATION NO. 68 OF 2020

Dayalal Giridhar Popat Vs. Samadhan Marketing & Marchandise Pvt Ltd and others
AND

CRIMINAL REVISION APPLICATION NO. 69 OF 2020

Hansa Nandlal Popat Vs. Samadhan Marketing & Marchandise Pvt Ltd and others
AND

CRIMINAL REVISION APPLICATION NO. 70 OF 2020

Ghanshyam Nandlal Popat Vs. Samadhan Marketing & Marchandise Pvt Ltd & ors
AND

CRIMINAL REVISION APPLICATION NO. 71 OF 2020

Dayalal Giridhar Popat Vs. Samadhan Marketing & Marchandise Pvt Ltd and others
AND

CRIMINAL REVISION APPLICATION NO. 72 OF 2020

Heena Dayalal Popat Vs. Samadhan Marketing & Marchandise Pvt Ltd and others
AND

CRIMINAL REVISION APPLICATION NO. 73 OF 2020

Dayalal Giridhar Popat Vs. Samadhan Marketing & Marchandise Pvt Ltd and others
AND

CRIMINAL REVISION APPLICATION NO. 74 OF 2020

Dayalal Giridhar Popat Vs. Samadhan Marketing & Marchandise Pvt Ltd and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M.P.Khajanchi, Advocate for the applicants
Mr. S.M.Bhangade, Advocate for respondents

CORAM : AVINASH G. GHAROTE, J.

DATE : 18/07/2022

Common Order

1. Heard Mr. Khajanchi, learned counsel for the applicants and Mr. Bhangade, learned counsel for the respondents.

2. All these 13 revisions challenge the order dated 20.1.2020 passed by the learned Sessions Judge , Chandrapur in Criminal Revision No. 34/2018 filed by the original accused challenging the order of issuance of process issued by the learned Special Court under Section 138 of the Negotiable Instruments Act.

3. The applicant/original complainant was the landlord of a premises which was taken on lease by the respondent/accused under lease deed dated 13.10.2016, in terms of which the accused was put in possession. Certain cheques were issued by the accused tenant in favour of the complainant towards rent. These cheques were presented by the complainant for realization, which having been dishonoured for the reason that the account

of the accused was closed. Since the notice of demand did not elicit any response, proceedings under Section 138 came to be filed by the complainant/landlord, in which learned JMFC on 9.3.2018 being prima facie satisfied, issued process.

4. This order of issuance of process dated 9.3.2018 came to be challenged by the tenant/accused in revision before the learned Sessions Court. The learned revisional Court by the impugned judgment dated 20.1.2020 allowed the revision and recalled the order of issuance of process and further directed the learned JMFC to consider the provisions of the second proviso of Section 143 of the N.I Act read with the second proviso to Sections 260(2), 259 and 202 of the Cr.PC and to make an enquiry to see whether there is a sufficient ground for proceeding against the original accused and thereafter to decide the complaint in accordance with law.

5. Mr. Khajanchi, learned counsel for the applicant/complainant submits that the question of applying the second proviso to Section 143 of the N.I. Act comes into picture where the learned Magistrate comes to a conclusion that the sentence of imprisonment exceeding one year may have to be passed, or for any other reason it was undesirable to try the case summarily, in which case after hearing the parties, he was required

to pass an order and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the Cr.P.C. It is submitted that this is not an exercise which can be done at the stage of issuance of process and therefore, the impugned judgment cannot be sustained and is liable to be set aside.

6. Mr. Bhangade, learned counsel for the respondents/accused supports the impugned judgment. He submits that there was civil litigation going on between the parties, inasmuch as the accused who was the tenant in respect of the premises let out to him by the complainant/landlord was not entitled to present the cheques given to him under the lease deed, as the accused/tenant was not using the premises. Regular Civil Suit No. 98/2017 had already been filed by the tenant/accused and the complaint did not disclose the pendency of any civil litigation between the parties and therefore, the order of issuance of process was incorrect as it was obtained by suppression of material fact. He submits that even otherwise it was permissible for the revisional Court to have taken into consideration the pendency of suit, on suppression of which count, the order of issuance of process was infirm and therefore, the revisional Court had rightly interfered in the same. He submits that in rare case it was permissible for the Court to look into the documents relied upon by the accused to

determine whether the case for issuance of process was made out, for which reliance is placed upon **Rukmini Narvekar vrs. Vijaya Satardekar, 2008 ALL SCR 2279**. He therefore submits that the impugned judgment ought not to have been interfered with.

7. The second proviso to Section 143 of the N.I. Act which has been relied upon by the learned Sessions Court for passing the impugned order, in my considered opinion, would be inapplicable, at the stage of issuance of process, for the reason that, that is not the stage when the second proviso to Section 143 of the N.I. Act can be invoked, as is explicit from the use of the expression “when at the commencement of, or in the course of a summary trial under this section ...”. That being the position, the order of issuance of process could not have been recalled by the learned Sessions Court based upon the second proviso to Section 143 of the NI Act.

8. The order dated 9.3.2018 by which process has been issued indicates that the learned Magistrate had perused the complaint, verified the documents placed on record and also heard the counsel for the complainant, whereupon a satisfaction had been arrived at, of the existence of a prima facie case, on account of which the process was issued. It is a trite position of law that the order of issuance of process need not be verbose, nor it should be of such a nature to indicate that the Court has

considered each and every averment and documents placed on record. That being the position, the issuance of process on the above consideration could not be faulted.

9. The contention of Mr. Bhangade, learned counsel for the respondents/accused to the effect that since the suit was already filed, there should have been disclosure of the pendency of the suit in the complaint and on account of this non disclosure, the complaint was not maintainable, in my considered opinion, is without any merit whatsoever. It is not disputed by him that though an application for injunction was filed, there has been no order passed by the learned Civil Court injuncting the complainant/landlord from presenting the cheques in question. Even if the pendency of the suit by the tenant before the civil Court is taken into consideration, in light of **Rukmini Narvekar** (supra), however, since it is not in dispute that the cheques have been issued under the agreement of lease, the question of entitlement of the complainant/landlord to present them cannot be a ground which can be raised at the stage of issuance of process, though it would be permissible for the accused to raise a defence based upon it. However, that is a stage far in the future.

10. In view of the above discussion, the impugned judgment order dated 20.1.2020 passed by the learned Sessions Judge, Chandrapur in Criminal Revision

(7)

30revn62.20+12 matters

No. 34/2018 and connected revisions cannot be sustained and the same is hereby quashed and set aside. The revisions are accordingly allowed in above terms.

JUDGE

Rvjalit