

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

CRIMINAL APPLICATION (APL) NO.726 OF 2022

(Vikram s/o Tulsidasji Nanwani Vs. Umatai w/o Dnyaneshwar Katkade)

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

Court's or Judge's orders.

Shri R. R. Vyas, Advocate for Applicant.

CORAM: VINAY JOSHI, J.

DATE: 8th JUNE, 2022.

Heard.

2. Accused of Summary Criminal Case No.45/2019 claims exception to the order of refusal to discharge and dismiss the complaint. Private complaint bearing Summary Criminal Case No.45/2019 was filed by the respondent – complainant for the offence punishable under Section 138 of the Negotiable Instruments Act ('N.I. Act'). The learned Magistrate by taking cognizance of the complaint issued process in terms of Section 204 of the Criminal Procedure Code, 1973 ('Code'). The order of issuance of process was challenged in Revision Petition which was came to be dismissed. Thereafter, the applicant – accused applied for dismissal of complaint and for his discharge. After hearing both sides, the learned Magistrate has rejected the said application vide order dated 19.11.2019. Being aggrieved, the applicant – accused has filed Criminal Revision 28/2019, which was similarly dismissed. Hence, this application.

3. It was the case of complainant that the applicant – accused was in financial crisis, therefore, hand loan was given. Towards the discharge of hand loan, the applicant has issued three cheques dated 30.08.2018 having denominations of Rs.60,00,000/- (Rupees Sixty Lakhs) each. All cheques were deposited by the complainant to his banker. However, they were returned for the reason of insufficient funds. The complainant issued statutory demand notice. However, the payment was not forthcoming within stipulated period therefore, the present complaint is filed.

4. The learned Counsel for the applicant has canvassed that the disputed cheques were issued towards security which were misused. Moreover, a stand is taken that forcibly blank cheques were obtained by the complainant which were used for complaint. Lastly, it is contended that the complainant has issued two demand notices and therefore, complaint is not tenable.

5. Pertinent to note that the applicant – accused has not disputed his signatures on cheques. It is not disputed that the complainant has deposited cheques to his banker which were dishonoured. Receipt of notice is also not disputed. Both the Courts below have rightly appreciated the contentions raised by the applicant while seeking dismissal of complaint. Whether the cheques were issued towards security or the blank cheques were issued is a matter of evidence. The Court below has recorded a finding that even from the receipt of first notice, the complaint was

well within limitation. Unless there is perversity or abuse of the process of Court, interference is not called for. The complainant has *prima facie* satisfied all the essential ingredients to constitute the offence punishable under Section 138 of the N.I. Act, at least to proceed with the trial. The impugned order does not suffer with any illegality. The accused failed to make out a case of interference for the ends of justice. In view of that the present application carries no merit. Hence, stands rejected.

6. After pronouncement of the order, the learned Counsel for the applicant prayed for staying the proceeding pending before the trial Court, so as to approach the Hon'ble Apex Court.

7. This application was filed for setting aside the order of Sessions Court upholding rejection of discharge and dismissal of complaint. For the reasons stated above, no merit was found in the challenge. Hence, there is no propriety to stay the proceeding before the trial Court. Prayer rejected.

JUDGE

NSN