

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

CRIMINAL APPLICATION (APL) NO.1337 OF 2019

Manojkumar s/o Ramkrishna Dhande,
Aged about 39 years, Occ: Advocate,
R/o Mangalwari Peth, Bhawani Square Umred,
Tah. Umred, Dist. Nagpur-441203. ...APPLICANT

---VERSUS---

1. Hon'ble Joint Civil Judge and Judicial
Magistrate First Class, Civil and Criminal Court
Building, Umred, Tah. Umred, Dist. Nagpur
2. Pravin Moreshwar Sahare
Aged about 38 years, Occ: Managing Director,
Virat Mahila Credit Urban Cooperative Bank
Ltd.
3. Kavita Pravin Sahare
Aged about 35 years, Occ: Vice President,
Virat Mahila Credit Urban Co-operative Bank
Ltd.
Sr. nos.2 & 3, R/o In front of Kushnarpanam
Building, Chandrika Pure Layout, Om Sainagar,
Godhani, Nagpur, Tah.-Dist. Nagpur 441123. ...NON-APPLICANTS

Shri A.C. Dharmadhikari, Advocate for applicant.

Shri Amit Chutke, APP for non-applicant no.1.

Ms M.N. Hiwase, Advocate for non-applicant nos.2 and 3.

CORAM : G.A. SANAP, J.
DATE : DECEMBER 23, 2022.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally by consent of the advocate appearing for the parties. Perused the record and proceedings.

1. This application has been filed challenging the order dated 09.12.2019 passed below Exh.1 in S.C.C. No.686 of 2018 by the learned Judicial Magistrate, First Class, Umred, whereby the learned Magistrate was pleased to direct the Assistant Superintendent, who was attached to 2nd Joint Civil Court, Junior Division and Judicial Magistrate First Class, Umred to file complaint against Advocate Mr. M.R. Dhande in the Court of 2nd Joint Judicial Magistrate First Class, Umred, for an offence punishable under Section 466 of Indian Penal Code.

2. The allegation, as can be seen from the order, is that in a case filed under Section 138 of the Negotiable Instruments Act, 1881 the applicant-advocate represented the complainant. It is the allegation of the non-applicant Nos. 2 and 3 that initially a copy of the statutory notice served before filing the complaint was not signed by the advocate. The advocate appearing for the complainant in the Court in presence of the advocate representing the accused made his signature on that copy of the notice. The learned advocate

appearing for the accused filed a pursis to that effect on record before learned Magistrate. The learned Magistrate, therefore, took cognizance and issued the directions as stated above.

3. I have heard Shri A. C. Dharmadhikari, learned advocate for the applicant, Shri A.R. Chutke, learned Additional Public Prosecutor for the State and Mrs. M.N. Hiwase, learned advocate for the non-applicant nos.2 and 3. for the parties. Perused the record and proceedings.

4. The learned advocate appearing for the accused before the trial Court is present today. The learned advocate, on instructions, submits that the dispute on this limited count has been resolved by the parties. The parties have decided to go on with the main application on merits. The learned advocate for the accused/non-applicant nos.2 and 3 submits that the Court may allow this application with appropriate directions.

5. The learned advocate for the applicant took me through the record and submitted that the *mens rea* required to be established was totally lacking. Learned advocate submitted that the original notice issued to the accused persons was returned unserved. The postal packets containing the original notices were not opened. The packets contain the signed original notices issued to the non-

applicant no.2 and 3/accused. The learned advocate, therefore, submitted that the this is not a case to forge a document with intention to create evidence of facts which did not exist.

6. I have gone through the record and proceedings. In my view, on both the counts the application deserves to be granted. The applicant is an advocate. The advocate appearing for the non-applicant nos.2 and 3 and applicant are practicing in one and the same Court. It appears that they have understood the consequences of this prosecution. In my view, therefore, the application deserves to be allowed.

7. Accordingly, the criminal application is allowed. The impugned order dated 09.12.2019 in S.C.C. No.686/2018 is set aside. The application stands disposed of.

Rule made absolute in above terms.

JUDGE

Manisha

Signed By:MANISHA ALOK
SHEWALE

Signing Date:23.12.2022 17:54