

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1107 OF 2022

Vijay Uddhav Renge

.. Petitioner

Versus

The State of Maharashtra and another

.. Respondents

Mr. Sumit S. Agrawal, Advocate for the Petitioner.

Mr. S. R. Yadav-Lonikar, APP for Respondent No. 1.

Mr. P. A. Bharat, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 23rd FEBRUARY, 2023.

P. C. :-

. Learned learned advocates for the parties. By consent of the parties taken up for final disposal.

2. The petitioner is challenging the order passed by the learned J.M.F.C., Court No. 12, Aurangabad dated 07.06.2022 whereby, process is issued against the present petitioner along with one other accused who is his wife.

3. Though a preliminary objection is raised by the respondents stating that, the order is challengeable by way of revision, this Court finds that, since a clear case is made out and since already notice is issued on 20.09.2022, there may be no use by sending the matter back for revision and therefore, the petition will be entertained in the facts and grounds.

4. The petition is on three counts. First, the petitioner is neither signatory, nor the cheque is issued from his account. Secondly, there is no notice issued to the petitioner raising demand and third that, there is no averment in the complaint fastening liability upon this petitioner. In support of his submissions, learned advocate for the petitioner pointed out the copy of cheque wherein, the signatory is Vijayshree Renge who happens to be wife of the petitioner. He specifically submits that the account is not joint account. The cheque is drawn on account of his wife. There is nothing to indicate that this petitioner was also liable to pay the amount of cheque. In support of his second submission, he points out that, the notice dated 02.03.2022 is addressed only to accused no. 1 and not to this petitioner. Third submission is that, the complaint is filed on 16.03.2022 in which, in paragraph No. 9 the complainant has stated that the notice was received by the accused on 03.03.2022 as the cause of action arose on 19.03.2022. Thus, the complaint is premature. In support of third submission he submits that, the Court could not have taken cognizance of the complaint which was filed at premature stage and which on the date of filing of itself was without cause of action. He relies upon the judgment of the Hon'ble Apex Court in a case of **Central Bank of India and another Vs. M/s. Saxons Farms and others** reported in **(1991) AIR (SCW) 3621** wherein, the Hon'ble Apex Court has discussed about the

demand notice in paragraph Nos. 7 and 8 as below :

“7. Though, no form of notice is prescribed in the above Clause (b) the requirement is that notice shall be given in writing within fifteen days of receipt of information from the bank regarding return of the cheques as unpaid and in the notice a demand for payment of the amount of the cheque has to be made.

8. The object of notice is to give a chance to the drawer of the cheque to rectify his omission and also to protect honest drawer. Service of notice of demand in Clause (b) of the proviso to Section 138 is a condition precedent for filing a complaint u/s 138 of the Act. In the present appeals there is no dispute that notices were in writing and these were sent within fifteen days of receipt of information by the appellant-bank regarding return of cheques as unpaid. Therefore, only question to be examined whether in the notice there was a demand for payment.”

5. The next judgment relied upon by the learned advocate is the judgment of the Hon’ble Apex Court in a case of **Alka Khandu Avhad Vs. Amar Syamprasad Mishra and another** reported in **(2021) AIR (SC) 1616** wherein, the Hon’ble Apex Court has held that the dishonoured cheque be issued by the accused where the facts were almost similar.

Paragraph Nos. 6 and 7 of the said judgment are quoted as below :

“6. We have heard learned counsel appearing on behalf of the respective parties at length, considered material on record and also considered the averments and allegations in the complaint. It emerges from the record that the dishonoured cheque was issued by original accused No. 1 – husband of the appellant. It was drawn from the bank account of original accused No. 1. The dishonoured cheque was signed by original accused No. 1. Therefore, the dishonoured cheque was signed by original accused No. 1

and it was drawn on the bank account of original accused No. 1. The appellant herein-original accused No. 2 is neither the signatory to the cheque nor the dishonoured cheque was drawn from her bank account. That the account in question was not a joint account. In the light of the aforesaid facts, it is required to be considered whether the appellant herein – original accused No. 2 can be prosecuted for the offence punishable under Section 138 r/w Section 141 of the NI Act?

7. On a fair reading of Section 138 of the NI Act, before a person can be prosecuted, the following conditions are required to be satisfied:

- i) that the cheque is drawn by a person and on an account maintained by him with a banker;
- ii) for the payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability; and
- iii) the said cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account.

Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque.

6. Third judgment relied upon by the learned advocate is the judgment of the Hon'ble Apex Court in a case of **Aparna A. Shah Vs. Sheth Developers Pvt. Ltd. Ad anr.** reported in **2013 AIR (SC) 3210** wherein, the Hon'ble Apex Court in paragraph No. 8 clause (i) has clearly stated that, a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain money to another person out of that account.

7. Thus, considering these judgments, it is clear that, there is no notice issued to the petitioner. The petitioner is not empowered of the cheque. There is no sufficient averment in the complaint as regards this petitioner. However, about the premature is concerned, it is for the learned J.M.F.C. to consider what is bar only for taking of the cognizance before the cause of action. Even the complaint is filed before the cause of action. What is taking of the cognizance and that by itself could not be reason to quash the complaint. However, it is for the learned Trial Court to decide. This question is open for the learned Trial Court.

8. Learned advocate for respondent No. 2 vehemently opposes the petition. He submits that, in fact, there was a transaction between the petitioner and the respondent No. 2. The notice clearly states the role of the petitioner. He further submits that, notice was in fact addressed

to both the accused persons though it was a common notice and the envelope was addressed to accused No. 1, but looking to the relations between the accused Nos. 1 and 2 who are husband and wife, he submits that there is sufficient knowledge to the petitioner being husband of the addressee of accused No. 1 and this treated to be a notice even to the husband. So far as third ground about the complaint is premature, he submits that, it is clearly a typographical mistake and it cannot be said to go to the root of the matter and certainly will not be a sufficient ground to quash the complaint or the process itself.

9. In view of the submissions, this Court finds that, certainly on two counts, first that, there is no notice to the petitioner and secondly that, petitioner is not a drawer of the cheque, a case is made out to quash the order dated 07.06.2022 passed by the learned J.M.F.C., (Court No. 12), Aurangabad below Exh. 1 in S.C.C. No. 2597/2022 to the extent of this petitioner.

10. In view of the above discussion, the criminal writ petition stands allowed in terms of prayer clauses (B) and (C).

11. The criminal writ petition stands disposed off.

(KISHORE C. SANT, J.)

PS.B.