IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Application No. 2773 / 2022

Alongwith

Criminal Application No. 2774 / 2022

Criminal Application No. 2775 / 2022

1. Subhash Kisanlal Lodha,
Age 75 years, Occu. Business

2. Smt. Madanabai Kisanlal Lodha,
Age : 93 years; Occu. Household

Both R/at: 38/25/26,
Prabhat Road, Lane No.7,
Erandwana, Pune. **...Applicants**

Versus

1. The State of Maharashtra,
Copy to be served on Govt. Pleader
High Court of Judicature at Bombay,
Bench at Aurangabad.

2. Hamid Nannumia Qureshi,
Age 70 years, Occu. Agriculture;
R/at: Tandulwadi Road,
Tal. Kallam, Dist. Osmanabad. **...Respondents**

With

Criminal Application No. 1168 / 2022

Prakash Kisanlal Lodha,
Age : 72 years; Occu. Business,
R/at: 38/25/26,
Prabhat Road, Lane No.7,
Erandwana, Pune. **...Applicant**

Versus

1. The State of Maharashtra,
   Copy to be served on Public Prosecutor
   High Court of Judicature at Bombay,
   Bench at Aurangabad.

2. Santosh Trimbak Dhas,
   Age 46 years, Occu. Agriculture;
   R/at: Dattanagar, Kallam,
   Tal. Kallam, Dist. Osmanabad.

3. Vitthal Haribhau Samudre,
   Age 46 years, Occu. Agriculture;
   R/at: Parali Road, Kallam,
   Tal. Kallam, Dist. Osmanabad. **...Respondents**

And

Criminal Application No. 731 / 2023

Prakash Kisanlal Lodha,
Age : 72 years; Occu. Business,
R/at: 38/25/26,
Prabhat Road, Lane No.7,
Erandwana, Pune. **...Applicant**

Versus

Vitthal Haribhau Samudre,

Age 46 years, Occu. Agriculture;
R/at: Parali Road, Kallam,
Tal. Kallam, Dist. Osmanabad. **...Respondent**

Mr. Subodh P. Shah, Advocate for the Applicants in Criminal Application Nos. 2773, 2774, 2775/2022.

Smt. D. S. Jape, APP for Respondent No.1/State.

Mr. Patil Milind Madhukar, Advocate for the Applicant in Criminal Application Nos. 1168/2022 and 731/2023.

Mr. D. J. Choudhary, Advocate for Respondent No.2 in Criminal Application Nos. 2773, 2774, 2775/2022 and for Respondent No.2 and 3 in Criminal Application Nos. 1168/2022 and 731/2023.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 28th FEBRUARY, 2023.
PRONOUNCED ON : 11th APRIL, 2023.

JUDGMENT :

. Heard finally with the consent of the parties.

1. These all applications are arising out of similar set of facts and therefore are taken up together.

2. The applicants/original accused in 138 cases have approached this Court with a prayer to quash the following

cases filed against them for the offences punishable under Section 138 of the Negotiable Instruments Act and the orders issuing process against them passed by the learned Judicial Magistrate First Class, Kallam, as below.

				Criminal Application No.2775/2022	Criminal Application No.2773/2022	Criminal Application No.2774/2022
	1	2	3	4	5	6
1	Complainant	Santosh Tryambak Dhas (SCC 422/2021	Vitthal Haribhau Samudre (SCC 480/2021)	Bharat Shankarrao Jadhav (SCC 14/2022)	Hamid Nannumiya Kureshi	Bhimrao Shripati Housmal (SCC 27/2022)
2	Date of Complaint	20.09.2021	08.11.2021	06.01.2022	06.01.2022	18.01.2022
3	Accused	Prakash Lodha	Prakash Lodha	1] Subhash Lodha 2] Smt. Madanbai Lodha	1] Smt. Madanbai Lodha 2] Subhash Lodha	Subhash Lodha
4	Date of Agreement	14.03.2020 (Oral)	14.03.2020 (Oral)	01.03.2021 (Oral)	01.03.2021 (Oral)	20.06.2021 (Oral)
5	Description of Property	80'x100' from Gat No.110	80' x 100' from Share of accused in Gat No.110.	80' East-West x 100' South –North abutting Barshi Road from Gat No.110.	80' East-West x 100' South –North abutting Barshi Road from Gat No.110.	80' x 100' from Share of accused in Gat No.110.
6	Consideration	Rs.7,00,000/-	Rs.7,00,000/-	Rs.7,00,000/-	Rs.7,00,000/-	Rs.7,00,000/-
7	Witnesses	1] Bharat Jadhav 2] Bhimrao Housmal	1] Hamid Kureshi 2] Bharat Jadhav 3] Bhimrao Housmal	1] Santosh Dhas 2] Hamid Kureshi	1] Santosh Dhas 2] Bharat Jadhav	1] Vitthal Samudre 2] Bharat Jadhav
8	Amount Paid in cash	Rs.5,00,000/- (Cash)	Rs.5,00,000/- (Cash)	Rs.4,75,000/- (Cash)	Rs.4,70,000/- (Cash)	Rs.4,60,000/- (Cash)
9	Date of issuing cheque	15.07.2021	15.07.2021	Not mentioned in complaint.	Not mentioned in complaint.	20.06.2021
10	Place of issuing cheque	Aurangabad (Accused called complainant)	Aurangabad (Accused called complainant)	Pune (Complainant voluntarily reached Pune)	Pune (Complainant voluntarily reached Pune)	Pune (Accused called complainant)
11	Cheque No.	60452	60451	39000	38999	806941
12	Date of Cheque	13.08.2021	06.09.2021	16.11.2021	15.11.2021	09.11.2021
13	Cheque Amount	Rs.4,80,000/-	Rs.4,90,000/-	Rs.4,75,000/-	Rs.4,70,000/-	Rs.4,60,000/-
14	Bank	Marathwada Gramin Bank	Marathwada Gramin Bank	Osmanabad District Central Coop. Bank. (Joint A/c of Accused 1 & 2)	Osmanabad District Central Coop. Bank. (Joint A/c of Accused 1 & 2)	Bank of Maharashtra
15	Purportedly written and signed by	Prakash	Prakash	Subhash	Subhash	Subhash
16	Reason for dishonour	Old A/c. Account not found in bank record.	Account is not active at present.	Insufficient Funds	Insufficient Funds	Account closed
17	Service of notice	30.08.2021	23.09.2021	Returned as house closed on repeated visits.	Returned as house closed on repeated visits.	10.12.2021
18	Reply	Yes	Yes	---	---	Yes

Sr.No.	Cri. Application No.	Case No.	Date of Issuing Process Order
1	Application No.2773/2022	S.C.C. No.15/2022	17.01.2022
2	Application No.2774/2022	S.C.C. No.27/2022	04.05.2022
3	Application No.2775/2022	S.C.C. No.14/2022	17.01.2022
4	Application No.1168/2022	S.C.C. No.480/2021	12.10.2021
5	Application No.731/2023	S.C.C. No.480/2021	23.11.2021

3. Coming to the facts of the case that the respondents/complainants filed a complaint under Section 138 of the N.I. Act. It is the case that the complainant and accused entered into an agreement for purchase of the land from the accused, who have shifted to Pune since long. The earnest amount was paid. However later on in spite of pursuation, accused failed to execute sale deed. Since the sale deed was not executed, complainant asked for the refund of the earnest amount. The accused therefore issued cheques. When the cheques were presented in the bank, the said were dishonoured with an endorsement as “funds insufficient”. The notices were issued demanding the amount. However in spite of notice, no amount was paid and therefore complaints came to be filed. The case of the applicants is that there was no any transaction. The applicants have shifted long back to Pune and therefore their lands and other business were looked after by the

complainants. Since the applicants are not residing at the native place, taking disadvantage of the situation, complainant stolen cheques and by forging signatures of the applicants, presented the said cheques in the bank. There was no any liability on the accused persons to pay any amount as alleged. It is further case that there are disputes pending between the parties, wherein the complaints are claiming to be protected tenant of the lands of the accused persons and therefore dispute started. This Court in Letters Patent Appeal No.22/2008 and 23/2008 have clearly held in favour of these accused persons by partly allowing the LPA's and the matters are remitted to the Maharashtra Revenue Tribunal by judgment and order dated 18.04.2019. Thus the dispute over tendency right and the ownership are subject matter of the dispute before the Maharashtra Revenue Tribunal. In such circumstances, there is no question of entering into agreement of sale land with the complainants.

4. It is further case of the accused that in all these cases, the story is almost similar that the agreements are entered orally

and earnest amount is paid in cash. It is submitted that in all the cases, it is a similar story that all the persons are not interested in the specific performance only interested in the cheque amount. It is the contention that the cheques are old cheques without MICR number, which no one not in use now a days in view of practice. They had relied upon the guidelines issued by the Reserve Bank of India in respect of the cheques wherein it is directed to ensure the use of 100% CTS-2010 compliance 'Truncated Cheques'. In this case, all the cheques are issued by Marathwada Gramin Bank, which is closed long back and there was no question of issuing cheques of such bank. It is thus submitted that very old cheques are misused with malafide and therefore continuance of the process would be clearly an abuse of process of law. The allegations are totally absurd and improbable and an oblique motive is appeared on the face of it.

5. Mr. Patil, learned Advocate for the applicant in Criminal Application Nos. 1168/2022 and 731/2023 adopts the argument of the learned Advocate Mr. Shah. In addition, he submits that

the cheques are drawn on Marathwada Gramin Bank. It is clear that those are of the series, which was in existence more than ten years back. He submitted that the accounts are shown to be in Marathwada Gramin Bank. On getting information under the Right to Information Act, he received the information that no such accounts are found. Marathwada Gramin Bank is closed down in 2001 and now after 21 years old cheques of the said bank are presented. He submits that when the cheques were present at least it was expected that the cheques are valid cheques. He submits that the learned trial Court has failed to appreciate this fact and has issued the process. As per RBI Guidelines, it was mandatory to use only MICR cheques. He further points out that the accounts from which cheques are issued, are not active since last eight years and thus complaints are not maintainable.

6. As against that learned Advocate Mr. Choudhary for respondent/complainant in all the applications submits that though the cheques were issued by the accused persons, it is for the person to issue cheques available with them and it is not

for the person who takes the cheques. Holder in due course has to present cheques given to him. The cheques are dishonoured for the reason funds insufficient and not for the reason that the cheques are not CTS cheques. After the cheques were dishonoured even the notice was sent for demand, the accused neither paid the amount, nor sent reply to the notice. While issuing notice, Court has to see the compliance of Section 138. The Court was satisfied about prima facie case and therefore has rightly issued the process. In any case, the submissions made and grounds taken are, can only be a defences to be taken in the trial. He further submits that in view of Section 118 and 138, there is a presumption in favour of the complainant and therefore the question of the validity of the cheques etc. cannot be gone into at this stage. He submits that when the bank has returned the cheques only with an endorsement as funds insufficient. There is no question to look into the other aspects as to whether the cheques were CTS cheques or otherwise. If the cheques were not valid, the bank would have returned the cheques with such an endorsement.

7. Learned Advocate for the respondent further submits that all questions are disputed questions of facts, which required a trial. He submits that though the applicants have come with the case that they have obtained hand writing expert's opinion as regards the signature on the cheques are not that of the complainant etc., same would be subject to trial on this count alone, case cannot be quashed. He further submits that though there is alternative remedy available of filing Revision, still the applicants have directly approached this Court and therefore the present applications are not maintainable and no case is made out for quashing.

8. As regards reply to application no.1168/2022, he submits that though submission is made that the Marathwada Bank is not in existence however he submits that the bank has processed the cheques whichshows that the cheques were still valid. His submission is that the cheques were 21 years old, cannot be accepted at this stage. The circulars of the RBI are only in the nature of guidelines.

9. In rebuttal, it is submitted that in all these cases story in the complaint is exactly similar. In all the cases, the allegation is that the oral agreement had taken place. The amount was paid in cash. However the amount returned is by cheque cannot be believed and this clearly shows that it is only with the malafide that the cases are filed. There was no reason for anyone to give or accept the old cheques, which are not in circulation.

10. Considering these submission, this Court has to consider mainly whether the complaints can be quashed by accepting the case of the applicants. It needs to be kept in mind that all these cases are under Section 138, wherein the complainant needs to show that he had presented cheques to the bank and that the cheques are dishonored. After receipt of intimation from the bank, a notice of demand is issued in stipulated period in spite of receipt of demand notice, there is failure to pay the amount within the stipulated period. On all these counts, looking to the facts of the case it is clear that the cheques were presented in the bank and the same were dishonored and it is

only after failure on the part of accused to pay the amount as per the demand notice, complaints are filed.

11. The learned Advocate for the applicants relied upon the judgment in the case of **Ahmad Ali Quraishi and Another Vs. State of Uttar Pradesh and Another**, reported in (2020) 13 SCC 435. It was a case where the Hon'ble Apex Court had held that the criminal proceedings were maliciously instituted with ulterior motives against accused, due to animosity arising out of partition of family properties. In that case the Hon'ble Apex Court has held that the High Court had failed to exercise jurisdiction under Section 482 of the Code of Criminal Procedure. It was not a case in respect of Section 138 of the N.I. Act.

12. The learned Advocate for the respondent relied upon the judgment of the Hon'ble Apex Court in Criminal Appeal Nos.694-695/2022 in the case of **Rathish Babu Unnikrishnan Vs. The State (Govt. of NCT of Delhi) and Anr**. The Hon'ble Apex Court had answered the issue as to whether summons and notice should have been quashed on the basis of factual

defences. It is answered in paragraph no.11 of the said judgment that the legal presumption of the cheque having been issued for discharge of liability must also receive due weightage. In a situation where the accused moves Court for quashing even before trial has commenced, the Court's approach should be careful enough to not to prematurely extinguish the case by disregarding the legal presumption which supports the complaint. In the said case, it is held that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption. Paragraph No.18 of the said judgment, is quoted here.

"**18.** Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited."

13. The next judgment relied upon is in the case of **NEPC**

Micon Ltd. and Others Vs. Magma Leasing Ltd., reported in (1999) 4 SCC 253. Wherein it is held that it is the duty of the Court to interpret it consistent with the legislative intent and purpose so as to suppress the mischief and advance the remedy.

14. The last judgment relied upon is in the case of **Dr. Rajul Ketan Raj Vs. Reliance Capital Ltd. and Another**, reported in 2016(5) Mh.L.J. The Hon'ble Court considered in paragraph no.16 of the said judgment, which is reproduced below.

"**16.** The uncontroverted assertions made in the complaint as well as the documents produced in support thereof prima facie disclose the essential ingredients of the offence under Section 138 of the N.I.Act qua the pps 9 of 32 final 716, 717 and 718 of 2015.doc applicant. Suffice it to say that the court in exercise of its jurisdiction under Section 482 of Cr.P.C. cannot go into the truth or otherwise of the allegations made in the complaint or delve into the disputed question of facts. The issues raised by the applicant by way of defence can be canvassed before the trial court and the same will have to be adjudicated on merit of the case and not at this stage."

15. In view of the above judgments, it is clear that the Court at the stage cannot go into the truth or otherwise of the allegations made in the complaint or look into the disputed

questions of facts. This Court finds that in these cases to come to conclusion about the malafide or about the validity of the cheques after 21 years would be entering into the questions of disputed facts as the same is not permissible in the limited jurisdiction available under Section 482 of the Cr.P.C. All the submissions by the applicants are in respect of the factual aspects and therefore it would not be proper to entertain these applications. The applications are without any substance and therefore deserve to be rejected. Thus all the applications are rejected.

[KISHORE C. SANT, J.]

16. Request is made on behalf of the applicants that since the applicants were protected by interim relief, the same be continued for four weeks. Though the request is opposed by the respondents, considering that the interim relief was in force for quite some time, the interim relief is extended by four weeks from today.

[KISHORE C. SANT, J.]

N A J E E B..