

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

45 CRIMINAL WRIT PETITION NO.1199 OF 2022

CHANDRAKANT NIVRUTTI GIRE
VERSUS
MANGAL W/O. VASANT BADE

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Advocate for Petitioner : Mr. Savant Vilas P
Advocate for Respondent : Mr. M P Gandle

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CORAM : KISHORE C. SANT, J.
Dated: February 06, 2023

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PER COURT :-

1. Heard learned counsel for the parties.
2. The petitioner has approached this court challenging the order of issuance of process passed by the learned JMFC, Beed dated 10.8.2022 in Criminal MA No.195 of 2022. The respondent had filed Criminal Misc. Application in the Court of the learned Magistrate under section 156 (3) of the Cr.P.C. on 22.2.2022 seeking directions to the police to investigate into the offence against the present petitioner punishable under sections 420, 379, 384, 386, 504, 506 of the IPC. The allegations in Cri.Misc. Application are that, the petitioner and deceased husband of the respondent had no relations. They had even no acquaintance. Still, the petitioner has filed a

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complaint under section 138 of the Negotiable Instruments Act (for short 'NI Act'.) It is stated that, only on the receipt of demand notice issued by the petitioner, it was realized by the husband of the respondent that the cheques were stolen and is now being used by the petitioner. The learned JMFC, Beed initially had directed police to investigate the case under section 202 of Cr.PC. and to submit the report within two months by order dated 7.4.2022. On receipt of the report, impugned order is passed.

3. It is the case of the petitioner that the petitioner had received a cheque from the deceased husband for refund of amount of Rs.2,50,000/- given as a hand-loan. The cheque was presented in the Bank on 7.10.2021. The same was returned on 12.10.2021 for 'insufficient funds'.

4. Thereafter, demand notice was sent and since the deceased failed to make the payment, a complaint was filed under section 138 of the NI Act. Process also came to be issued against the deceased. However, unfortunately, deceased died on 20.1.2022. The petitioner, therefore, had filed a civil

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suit bearing RCS No.887 of 2022 in the Court of learned Civil Judge J.D., Georai for recovery.

5. It is the submission of the learned counsel for the petitioner that when he had filed a complaint u/s 138 of the NI Act and after that when he filed a suit for recovery of the amount, the respondent has filed a complaint. This is nothing but giving criminal colour to a civil dispute and prays for quashing of the proceeding.

6. Learned Advocate for the respondent vehemently opposed the prayer. He submits from the reply and its annexures that immediately on receiving the demand notice, deceased Vasantrao realized that a mischief is played and his cheques are being misused. He had, therefore, lodged a complaint to the police station Georai on 6.12.2021 stating that stolen cheques are used by the petitioner. It appears that there was no inquiry made by the police. On 22.12.2021 another complaint was filed by the present respondent stating that the cheques sent by the deceased husband were stolen. Deceased was not in a position to sign the cheque as he was suffering from Alzheimer and Parkinsons. Learned counsel

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further stated in the complaint that on 20.12.2021 this petitioner had been to the house of the respondent and tried to extort the amount of Rs.2,50,000/- and had threatened her that if the amount is not, paid he will kill them. He thus submits that a clear case is made out and, therefore, a complaint was filed. Police on investigation found that a case is made out and submitted a report to the Court. The court only on considering the said report has issued process by the impugned order. He submits that, no case is made out to quash the proceeding.

7. After hearing the parties, it is clearly seen that the allegations by the respondent started only after the notice for demand of the cheque amount was sent and received by the deceased. The allegations by the respondent and her deceased husband were purely in the nature of counter blast to the 138 NI Act complaint. So far as the allegations of extortion is concerned, it is clear that it was the amount of cheque and cannot be said to be an extortion. The allegations clearly appear to be concocted and afterthought. In such circumstances, continuance of the proceeding would clearly be an abuse of process of law. Parties are already before the Court
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in 138 of the NI Act proceedings as well as in a suit filed for recovery by the petitioner. All the defences are available to the respondent in the said proceeding. When the petitioner had filed a proceeding under law, it clearly shows that he has adopted the course available under law, as observed above. On the contrary, allegations now made by the respondent are clearly after thought and are made only for the sake of countering the allegations in 138 NI Act complaint and recovery suit. In view of the same, the proceedings deserves to be quashed and set aside. Hence, following order is passed.

O R D E R

- I. Writ Petition is allowed in terms of prayer clause “B”.
- II. Writ Petition is accordingly disposed off.

(KISHORE C. SANT, J.)

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