

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1212 OF 2022

Nilesh s/o Prabhakar Pawar
Age 40 years, Occu.: Business,
R/o. Torna Niwas, Sharda Nagar,
Behind COCSIT College Latur,
Tal & Dist. Latur.

...Petitioner

Versus

1. Rajkumar s/o Sharad Gadewar,
Age : 51 years, Occ.: Business,
R/o. Hadolti, Tal. Ahmedpur, Dist. Latur.

2. The State of Maharashtra,
(Copy served through G.P.A. Office
on A.P.P. High Court of Judicature
of Bombay Bench at Aurangabad.

...Respondents

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Advocate for Petitioner : Mr. Patel Fayaz K.
Advocate for Respondent No.1 : Mr. S. B. Modde
APP for Respondent No.2/State : Smt. D. S. Jape

...

CORAM : KISHORE C. SANT, J.

DATE : 20th MARCH 2023.

ORAL JUDGMENT :

1. Heard the learned Advocates for the respective parties at length.

By consent of the parties, taken up for final disposal.

2. In this petition, a challenge is to an order dated 28.07.2022 passed by the learned Additional Sessions Judge, Ahmedpur in Criminal Revision Application No.9/2021, whereby the said Revision Application preferred by this petitioner came to be rejected. The petitioner in the Revision had challenged the order dated 23.02.2021 passed by the learned Judicial Magistrate First Class, Ahmedpur in S.T.C.C. No.5/2021, whereby the learned Magistrate was pleased to issue process against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act.

3. The petitioner's case is that the impugned cheque was issued by M/s. Rajani Petroleum and he had only signed the same cheque as a power of attorney holder of the proprietor, who is his sister. Since had signed the cheque in the capacity as power of attorney holder, it was necessary for the complainant to add 'Rajani Petroleum' as accused with averment that the person signed the cheque is looking after day to day transaction of the proprietary is concerned. However, the learned Magistrate without considering this aspect had issued a process.

4. The learned Sessions Court however failed to appreciate this vital aspect. The learned Sessions Judge has only considered that demand notice was given by the complainant and it is only after failure on the part of the drawer, the complaint was lodged. The Court further considered the fact that the cheque in question is issued under the signature of the petitioner. The learned Court observed that as per the complaint, the amount was given to the petitioner in his personal capacity and therefore he was responsible to make the payment. The cheque was therefore issued towards discharge of personal liability and not of the proprietary concern. This petitioner has therefore come to this Court mainly on the ground that the learned Sessions Court has failed to appreciate that in absence of the proprietary concern, the petitioner alone cannot be prosecuted for the offence punishable under Section 138 of the N.I. Act.

. The petitioner relied upon the following various judgments in support of his submissions.

- (I) Dilip Hariramani Vs. Bank of Baroda 2022 AIR (Supreme Court) 2258.
- (II) Himanshu Vs. B. Shivamurthy and another (2019) 3 Supreme Court Cases 797,

- (III) Narayanan Vs. The State of Maharashtra & Anr,
2017 ALL MR (Cri) 4925 A.C.,
- (IV) Philip J. Vs. Ashapura Minechem Ltd., & Anr.,
2016 ALL MR (Cri) 1802.
- (V) Aneeta Hada Vs. Godfather Travels and Tours. Pvt.
Ltd (2012) 5 Supreme Court Cases 661.

. He submits that thus the legal position is very clear that to maintain a complaint against the accused person, when the cheque is issued by the Company-M/s. Rajani Petroleum. The said proprietary concern is the necessary party and in absence of such corporate person, individual person cannot be prosecuted.

5. The learned Advocate for respondent no.1/original complainant vehemently argued the case. He submits that though the cheque was issued by the Rajani Petroleum, however it was signed by the present petitioner. The hand loan was also given to the present petitioner and it is thus he was personally liable to repay the amount of hand loan and therefore he had issued the cheque. He submits that the complaint is therefore rightly filed only against the present petitioner and the same was maintainable.

6. Considering the submissions and the petition with its annexures, it is clearly seen that the cheque was issued bearing stamp of M/s. Rajani Petroleum. The said was signed by the petitioner in the capacity as power of attorney holder. It is thus clear that it was a cheque issued for the proprietary concern and not in individual capacity. Now in view of a settled position of law, it is clear that unless the proprietary concern is joined as party, the signatory alone cannot be made an accused. In view of this, this Court finds that the petition deserves to be allowed. Hence the following order.

ORDER

- (i) The Writ Petition is allowed in terms of prayer clause 'A' and 'B'.
- (ii) With this, the Writ Petition is disposed off.

[KISHORE C. SANT, J.]

Najeeb.