

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.707 OF 2007

Sanjay Prakash Nimbalkar

..... Petitioner

Versus

Manoj Dinkarrao Gore

and another

.... Respondents

Mr. Umesh Kurund, Advocate i/b. S.S. Patwardhan for the
Petitioner.

Mr. Sharad T. Bhosale, Advocate i/b. Dilip Bodake, for the
Respondent No.1.

Mr. Arfan Sait, APP for the Respondent No.2-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 14th SEPTEMBER, 2023

JUDGMENT :

1. The Petitioner is the original accused in S.T.C. No.1629/2005 before the Judicial Magistrate, First Class, Madha, District-Solapur. The complaint was filed by the Respondent No.1 herein for dishonor of cheque for the amount of Rs.60,000/-. The learned Magistrate issued

process against the Petitioner. Thereafter the Petitioner appeared before the Magistrate, filed an application below Exhibit-10 mentioning that he was always willing to deposit the said amount of Rs.60,000/- and he had, in fact, kept a demand draft for the said amount ready on 10.10.2005, but, the complainant did not accept it and, therefore, no offence was made out. This application was rejected by the learned Magistrate vide his order dated 3.2.2007 and, therefore, the Petitioner has challenged the said order and the pending proceedings against him in the present Writ Petition.

2. Heard Mr. Umesh Kurund, learned counsel for the Petitioner, Mr.Sharad Bhosale, learned counsel for the Respondent No.1 and Mr. Arfan Sait, learned APP for the Respondent No.2-State.

3. The complaint was filed by the Respondent No.1. It is his case that the Respondent No.1 was providing meals to the workers, engineers and staff officers engaged in constructing of a fly-over at Kurduvadi, Taluka-Madha District-Solapur. According to the Respondent No.1, an

amount of Rs.60,000/- was due and payable by the Petitioner-accused in respect of that transaction. The Petitioner gave a cheque of Rs.60,000/- dated 10.9.2005 drawn on Bank of Maharashtra, Osmanabad Branch. The Respondent No.1 deposited that cheque at Kurduvadi in the State Bank of India. It was dishonored as the payment was stopped. The Respondent No.1 sent a statutory notice on 29.9.2005 and demanded payment of Rs.60,000/-. According to the Respondent No.1, the Petitioner did not accept the notice, but, accepted the notice sent Under Certificate of Posting, but, the Petitioner did not make the payment and, therefore, the complaint was filed.

4. The learned Magistrate vide his order dated 14.11.2005 issued process against the Petitioner. After that the Petitioner appeared before the Court and submitted that he was always willing to make payment of Rs.60,000/- to the Respondent No.1, but, he was refusing to accept it and, therefore, the proceedings be dropped. This Application filed below Exhibit-10 is rejected and hence, the present Writ

Petition is filed.

5. The learned counsel for the Petitioner submitted the Petitioner-accused was always ready and willing to make the payment of Rs.60,000/-. In fact, on receipt of the notice, he had immediately replied to the notice telling the Respondent No.1 that he should collect the amount of Rs.60,000/- from the Petitioner's office, but the Respondent No.1 did not collect said amount and filed the complaint. The Petitioner appeared on his own before the learned Judge and even offered to make the payment of Rs.60,000/-,but, inspite of that the prosecution is continued against him.

6. The learned counsel submitted that the Petitioner had drawn a demand draft on 10.10.2005 which shows that within 15 days of receipt of the notice, he was prepared to make the payment of Rs.60,000/-. He submitted that this demonstrates that the Petitioner was always willing to make the payment and, therefore, no offence under Section 138 of the Negotiable Instruments Act, 1881 is made out.

7. The learned counsel further invited my attention to the order dated 25.10.2007 passed by this Court (Coram: B.H. Marlapalle, J.) in Criminal Writ Petition No.707/2007, in which there was a reference of another demand drafted dated 10.12.2005 for the said amount of Rs.60,000/-, but, that demand draft had become stale and, therefore, this Court had permitted the Petitioner to take back said demand draft from the record of the trial Court and to submit fresh demand draft for the said sum of Rs.60,000/- within two weeks from 25.10.2007. The learned counsel for the Petitioner submitted that even this order was complied with and the Petitioner had deposited a fresh demand draft within that period. The order of this Court further permitted the Respondent No.1 to receive the said demand draft and encash it. However, that demand draft was not collected by the Respondent No.1 .

8. This shows that the complainant only wants to harass the Petitioner and this is nothing but abuse of process of law. Therefore, the Petitioner has prayed for quashing of

the proceedings pending against him and the order of issuance of process passed by the learned Magistrate against the Petitioner.

9. The learned counsel for the Respondent No.1 submitted that once the payment was not made within 15 days of receipt of notice, the offence was complete and it cannot be wiped out. He submitted that the Petitioner's reply to the notice sent by the Respondent No.1 mentions that the Petitioner wanted the Respondent No.1 to sign an agreement. Thus, the offer to make the payment was a conditional offer and, therefore, it was not acceptable to the Respondent No.1. Thus, there was non-payment of the cheque amount and, therefore, the offence was complete and the prosecution must continue.

10. I have considered these submissions. At the outset, it must be mentioned that the Respondent No.1 has not filed affidavit-in-reply to contradict the contentions of the Petitioner made in the present Writ Petition. The Petition mentions that on receipt of the notice, the Petitioner

requested the Respondent No.1 to execute a receipt for receiving the amount of Rs.60,000/-. Thus, the Petitioner had offered to make the payment of the amount of the cheque, but, the Respondent No.1 never responded to the Petitioner's offer to collect the amount of Rs.60,000/-.

11. The Petitioner had even prepared a demand draft for Rs.60,000/- on 10.10.2005 in the name of the Respondent No.1. This clearly shows his bonafide intention to return the amount and yet, the Respondent No.1 adamantly did not accept the said demand draft.

12. The reply to the notice mentions that the Petitioner was calling the Respondent No.1 to come to the site-office of the Petitioner and to collect Rs.60,000/- and execute a receipt in acknowledgment of receiving the amount. The reply also mentions that the Petitioner was requesting the Respondent No.1 to sign the agreement.

13. The learned counsel for the Petitioner invited my attention to Exhibit-A to the Petition which the Petitioner

wanted the Respondent No.1 to sign. Perusal of that document shows that it is nothing but a receipt of the balance amount of Rs.60,000/- in respect of that transaction. The receipt specifically mentions the cheque number which was subject matter of the complaint. The Petitioner wanted the Respondent No.1 to sign this receipt, but, the Respondent No.1 neither signed the receipt nor accepted the amount. Therefore, no fault can be found with the Petitioner. The Petitioner had genuinely tried to make the payment, but, only because of adamant attitude of the Respondent No.1 the payment was not received by the Respondent No.1.

14. The Petitioner on his own appeared in the trial Court. It is mentioned in paragraph-5 of the Petition. This also shows his bonafide intentions and he preferred an application at Exhibit-10 offering to make payment of Rs.60,000/-. In that application, there was a reference to the demand draft dated 10.10.2005 for the amount of Rs.60,000/-. All these facts are not disputed by the Respondent No.1 by filing affidavit-in-reply to this Petition.

15. The order dated 25.10.2007 indicates that this Court had permitted the Petitioner to submit a fresh demand draft of Rs.60,000/- in the trial Court. Even this condition was complied with by the Petitioner as stated by learned counsel for the Petitioner. In spite of that said DD was not collected by the Respondent No.1 though permitted by this Court.

16. Thus, from aforesaid history of the matter, it is quite clear that at every stage the Petitioner had shown willingness to make the payment of Rs.60,000/-, which was the amount of the subject cheque and he had taken actual steps in fulfilling his commitment and yet, the complainant for the reasons best known to him, refused to accept the amount of Rs.60,000/- and insisted on continuing with the prosecution.

17. Therefore, in my opinion all this is nothing but abuse of process of law and the proceedings and the order passed against the Petitioner are required to be quashed and set aside. Hence, the following order:

:: O R D E R ::

- i. The Petition is allowed.
- ii. The order of issuance of process against the present Petitioner dated 14.11.2005 passed by learned Judicial Magistrate, First Class, Madha, District-Solapur in S.T.C. No.1629/2005 is quashed and set aside.
- iii. Rule is made absolute in aforesaid terms.
- iv. The Petition is disposed of accordingly.

(SARANG V. KOTWAL, J.)

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
2023.09.20
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Deshmane (PS)