IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2316 OF 2017

Rekha Sharad Ushir ....Petitioner
vs.
Saptashrungi Mahila Nagari Sahkari Patsansta Ltd.,
Kalwan, Through Sahebrao Nimba Pawar And Anr. ...Respondents

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Mr. B.K. Raje, for the Petitioner.

Mr. Bharat Gadhavi, a/w. Ms. Mansi Dande, i/b. Tejesh & Associates, for Respondent No.1.

Mr. Arfan Sait, APP, for State/Respondent.

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CORAM : SARANG V. KOTWAL, J.

DATE : 18th DECEMBER 2023

P.C. :

1. Heard parties.

2. The Petitioner is the original accused in S.C.C. No.648 of 2016 before the JMFC, Kalwan. The Petitioner has challenged the order dated 2nd March 2017 issuing process against her under Section 138 of the Negotiable Instruments Act.

3. The complaint is filed by the Respondent No.1. It is their case that the complainant is a Credit Co-operative Society. The Petitioner had

taken a loan of Rs.11,97,000/- on 25th July 2008 from the said credit society. The Petitioner had executed all the necessary documents, including the promissory note. In repayment of the principal amount as well as the interest, the Petitioner issued a Cheque No.010722, drawn on Shri Ganesh Sahakari Bank Ltd. Nashik, Raviwar Karanja Branch branch for Rs.27,27,460/- dated 3rd October 2016. That cheque on presentation was dishonoured on 14th October 2016. After complying with the statutory requirements of sending the notice, as the payment was not made, a complaint was filed. Learned Magistrate observed that he perused the documents annexed to the complaint, prima facie case was established. Ingredients of Section 138 of the Negotiable Instruments Act were made out and, hence, he issued process under Section 138 of the Negotiable Instruments Act on 2nd March 2017. The said order is under challenge in the present petition.

4. Learned Counsel for the Petitioner submitted that the Petitioner has repaid the entire loan and yet the Respondent No.1 has chosen to prosecute her. Learned Counsel invited my attention to the earlier complaint filed by the same Respondent No.2 against the Petitioner, which was filed vide SC No.1358 of 2015 before the Judicial Magistrate First Class, Kalwan. Original number was Criminal Case No.135 of 2007.

That case was for dishonour of the cheque dated 10th February 2007 for Rs.3,75,976/-. The said prosecution was withdrawn by the complainant because the Petitioner had repaid the amount of the cheque during pendency of the said prosecution. Learned Counsel, therefore, submitted that even on this occasion the loan is already repaid and, therefore, the process should not have been issued against him. Learned Counsel for the Respondent No.1 submitted that the subject matter of the earlier prosecution was the Cheque No.010721 and the subject matter of the present prosecution is the Cheque No.010722. This shows that there is connection between the two loan transactions.

5. Learned Counsel for the Respondent No.1 submitted that the earlier complaint was a totally separate subject matter. He further submitted that the learned Magistrate has perused the documents annexed to the complaint. Though the learned Counsel for the Petitioner submitted that there were no documents annexed to the complaint, the record shows that the complaint was accompanied by various documents viz. The resolution, cheque, memo, notice and acknowledgment. Those documents are described in the list of documents accompanying the complaint. This is also part of the record in the present petition and that list is at page 51.

6. I have considered these submissions. At the stage of issuance of process, the learned Magistrate had to refer to the averments in the complaint. The complaint by itself adequately describes commission of offence, as the cheque was dishonured. The case of the complainant is that in repayment of the principal amount as well as the interest, the said cheque was given, which was dishonoured. There is a presumption under Section 139 of the Negotiable Instruments Act running against the Petitioner. The repayment of the loan, as canvassed by the learned Counsel for the Petitioner, can only be proved during trial after the evidence is led. At this stage, there is nothing on record to reach a conclusive finding that the loan was repaid and there was no legally enforceable liability pending against the Petitioner for which the cheque was given. The earlier transaction and the prosecution was for a separate loan transaction, as is described in that complaint itself. Therefore, it is not possible to connect both these prosecutions, though the cheque numbers in those prosecutions are serially one after the other.

7. Considering this discussion, it is not possible to hold that the order passed by the learned Magistrate issuing process was without basis or illegal.

8. With the result, I do not find any substance in the petition. The petition is dismissed. The interim order passed earlier stands vacated.

(SARANG V. KOTWAL, J.)