

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

Criminal Writ Petition No. 4423 of 2016

Shwet Sarita Farm Products
Through

... Petitioner.

1. Kamlakar A. Samant
Age. 66 yrs., major, Occ.Business.

2. Anant Kamlakar Samant
Age. 28 yrs., major, Occ.Business.
Address : Anant Ashram, Hirapur Road,
Chalisgaon, Dist.Jalgaon.

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Versus

1. Trimurti Sugar Agency
Proprietor Late Shriram B. Khatri
Now represented by Jayprakash
Shreeram Khatri
Age.32 years Occ.Business.
Address.R-5/1, Office 15, Jay Gandhi Market
Yard, Pune.411037.

... Respondent.

2. State of Maharashtra,
Copy to P.P. High Court of Bombay, Mumbai

Mr Vaibhav R. Gaikwad i/b Mr Raviraj R. Paramane for the
Petitioner.

Mr HJ Dedhia, APP for State.

Coram : R.N.Laddha, J.

Reserved on : 6 October 2023.

Pronounced on: 4 December 2023.

Order :

Heard learned Counsel for the petitioner and learned APP for the State.

2. This criminal writ petition is filed by the original accused to quash the criminal complaint bearing SCC No.3849 of 2011 pending before the Court of Judicial Magistrate, First Class, Pune.

3. It is submitted that Trimurti Sugar Agency (respondent herein), through its proprietor Shreeram Babulal Khatri, filed a criminal complaint bearing SCC No.3849 of 2011 against the present petitioner(s) for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'NI Act'). During the pendency of this proceedings, the complainant, Shreeram Babulal Khatri, passed away on 31.8.2014. After his demise, on 24.11.2014, the present respondent Jayprakash, who claims to be the son of late Shreeram Babulal Khatri, filed an application for substitution and permission to prosecute the complaint. This application was allowed by the trial Court on 2.5.2015. The accused had also filed an application to dismiss the complaint under Section 256 of the Code of Criminal Procedure, 1973 (for short, 'CrPC'), which was rejected by the trial Court on

17.8.2016.

4. It is the grievance of the petitioner(s) that the learned trial Court allowed the present respondent, Jayprakash, to prosecute the complaint despite the absence of a legal heir certificate, succession certificate, or authority letter from the complainant Trimurti Sugar Agency. Further, it is submitted that since the original complainant, Shreeram Khatri, has expired, the present respondent, who was allowed to proceed with the complaint, cannot prove any transaction as he was not party to the alleged transaction.

5. It is submitted that there is no legally enforceable debt against the accused/petitioner(s). The original complainant misused the blank cheque by filling in the name, date, and amount, and even the signature was denied by the petitioner(s). The present respondent was not the holder of the disputed cheque, and there is no legally enforceable debt against him. At present, the matter is pending before the trial court for recording the statement of the petitioner(s)/accused under Section 313 CrPC.

6. Upon perusal of the material placed on record, it is seen that the criminal complaint bearing SCC No.3849 of 2011 is

currently pending before the trial Court for recording the statement of the accused/petitioner(s) under Section 313 CrPC. It is now up to the trial Court to determine the complainant's competence to proceed with the complaint, to examine the defence and grounds taken by the accused and to decide the matter on its own merits. After recording the statement under Section 313 CrPC, the accused/petitioner(s) may also present evidence in their defence, and no interference is warranted at this stage.

7. In view of this, the petition stands dismissed. It is made clear that this Court has not examined the merits of this matter and has left it to the learned Magistrate to decide the case on its own merits. As the complaint has been pending since 2011, the learned Magistrate is requested to expedite the trial.

[R. N. Laddha, J.]