



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

CRIMINAL WRIT PETITION NO. 226 OF 2023

Smt. Meena w/o Shashikant Gole,
aged 44 yrs. Occu : Nil,
R/o Kaiwalya Residency H. No.10,
Ganeshnagar, Dhayari, Pune 411041.

... **PETITIONER**
(ORIG. ACCUSED)

VERSUS

1. The State of Maharashtra,
Copy to be served on Learned
Police Prosecutor,
Hon'ble High Court of Judicature of Bombay,
Bench at Aurangabad.

... **FORMAL RESPONDENT**

2. Ashutosh s/o Vishnu Ratnaparkhe,
aged 46 yrs. Occu : Business,
r/o Desaipura, C/o Ramnikhil Desai,
Nandurbar 425 412.

... (Or. Comp.)
RESPONDENTS

WITH

CRIMINAL WRIT PETITION NO. 232 OF 2023

Smt. Meena w/o Shashikant Gole,
aged 44 yrs. Occu : Nil,
R/o Kaiwalya Residency H. No.10,
Ganeshnagar, Dhayari, Pune 411041.

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Nandurbar 425 412.

... (Or. Comp.)
RESPONDENTS

WITH
CRIMINAL WRIT PETITION NO. 233 OF 2023

Smt. Meena w/o Shashikant Gole,
aged 44 yrs. Occu : Nil,
R/o Kaiwalya Residency H. No.10,
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WITH
CRIMINAL WRIT PETITION NO. 234 OF 2023

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RESPONDENTS

Shri S. M. Kulkarni, Advocate for petitioner in all petitions.
Ms. Pratibha J. Bharad, APP for respondent No.1-State in all
petitions.
Shri R. R. Totala, Advocate for respondent No.2 in all petitions.

CORAM: SANJAY A. DESHMUKH, J.

JUDGMENT RESERVED ON : 10/05/2024

JUDGMENT PRONOUNCED ON : 21/06/2024

1. **Rule.** Rule made returnable forthwith.
2. Heard learned advocates appearing for the respective parties.
3. These writ petitions are filed for quashing of various orders passed by learned Judicial Magistrate First Class, Nandurbar in the Summary Criminal Cases Nos.1010/2019, 1011/2019, 1012/2019 and 1013/2019 registered under Section 138 of the Negotiable Instruments Act (for short, "the N.I.Act").
4. The petitioner moved various applications which are mentioned below writ-wise. Those were rejected. The applications of the respondent No.2 for grant of interim compensation were allowed. All those impugned orders are challenged in these writ petitions :-

i) **CRI. WRIT PETITION NO. 226 OF 2023**

An order passed below Exh.1 of issue process, Exh.35 for production of statement of bank accounts of the respondent No.2, Exh.36 for sending cheques to the Handwriting Expert for examination of signature on disputed cheque, Exh.37 for

verification of signatures of the petitioner on each page of agreement, Exh. 39 for merging and clubbing of all these cases for hearing together, Exh.21 discharge of the petitioner and for dismissal of complaint for want of jurisdiction. Exh.12 for grant of interim compensation to the respondent No.2 which was allowed. All above applications filed by petitioner were rejected.

ii) **CRI. WRIT PETITION NO. 232 OF 2023**

An order passed below Exh.1 of issue process. Exh.20 for discharge of the petitioner and dismissal of complaint for want of jurisdiction, Exh.31 for production of statement of bank accounts of respondent No.2, Exh.32 for sending cheques to the Handwriting Expert for examination of signatures on it. Exh.33 for comparing signature of the petitioner on cheque and each page of the alleged agreement by Court and Exh.12 for grant of interim compensation.

iii) **CRI. WRIT PETITION NO. 233 OF 2023**

An order passed below Exh.1 of issue process, Exh.21 for discharge of accused and for dismissal of complaint for want of jurisdiction, Exh.32 for production of statement of bank accounts of the respondent No.2, Exh.36 for direction for merging and clubbing of all four cases and try them as one and same offence, Exh.32 for sending cheque to Handwriting Expert, Exh.33 for

examination of signature on each agreement. Exh. 34 for comparing signatures of petitioner on each page of the agreement by Court and Exh.12 for grant of interim compensation.

iv) **CRI. WRIT PETITION NO. 234 OF 2023**

An order passed below Exh.1 of issue process, Exh.21 for discharge of the petitioner and for dismissal of complaint for want of jurisdiction, Exh.32 for production of statement of bank account of the respondent No.2, Exh.36 the direction for merging all charges and clubbing four cases and to try them as one and same offence, Exh.33 for sending cheque to Handwriting Expert, Exh.35 for verification of each signature of petitioner on each page of the agreement by the Court and Exh.12 for grant of interim compensation filed by the respondent No.2.

5. The brief facts of all these cases are as under :-

a) There were some money exchange transactions between the petitioner and respondent No.2. The respondent No.2 paid huge amount to the petitioner as hand loan. Three cheques dated 15/06/2019, 01/07/2019 and 15/07/2019 of Rs.3,80,000/- each and fourth cheque dated 20/08/2019 of Rs.3,00,000/- were given as security by the petitioner to the respondent No.2. Those cheques were deposited in the Maharashtra Gramin Bank at

Nandurbar for realization. That bank sent it to the Branch at Deopur, Dist. Dhule for processing. However, funds were not sufficient in the bank account of the petitioner and therefore, dishonored cheques were sent back to the respondent No.2 with cheque return memos.

b) The statutory notices under Section 138 of the N.I. Act were issued to the petitioner. The amount of those cheques were not paid to the respondent No.2. Therefore, four different Summary Criminal Cases were filed against a petitioner in the Court of learned JMFC, Nandurbar. After hearing the respondent No.2 and on perusal of the documents, learned Judicial Magistrate First Class, Nandurbar issued process against a petitioner in all the cases.

6. A petitioner appeared in all cases and moved various applications as mentioned in para No.4 of this judgment. Those applications filed by the petitioner were decided on merit and rejected. The respondent No.2 moved the applications for interim compensation in each case and those were allowed.

7. Learned advocate for the petitioner submitted that the money transaction took place between the petitioner and respondent No.2 at Pune. However, mischievously and in order to

harass the petitioner, these complaints are filed in the Court of JMFC, Nandurbar. The Nandurbar JMFC Court has no jurisdiction to try these complaints cases. A petitioner is residing at Pune and not at Nandurbar. The procedure as to inquiry as per Section 202 of the Code of Criminal Procedure, 1973 (for short, the Cr.P.C.) was not followed by the learned JMFC, Nandurbar. The enquiry as per Section 202 of the Cr.P.C. is mandatory and without making enquiry, the orders of issue process are illegal. He lastly submitted to allow all the writ petitions as all the orders passed against petitioner are illegal.

8. Learned advocate for the petitioner is relying upon the following authorities :-

- i] **2023(1) Mh.L.J. 238 :**
[Sayed Mohammed Omair s/o Sayed Ibrahim Vrs. State of Maharashtra and another.]

It is held that the Magistrate issued process without holding an enquiry or ordering the investigation under Section 202 of the Cr.P.C. No reason is assigned by the Magistrate as to why he restricted himself to examine the documents. Such order is not sustainable. The matter was remanded to the Trial Court for holding enquiry under Section 202 of the Cr.P.C.

- ii] **2007 CRI. L. J. 115 :**
[Ahuja Nandkishore Dongre Vrs. State of Maharashtra and another.] in which it is held as under :

The jurisdiction of Court has to be gathered from the place where money was intended to be paid. The Court at another place within whose jurisdiction cheque was merely presented for realization cannot be said to have jurisdiction to try the case.

9. Learned advocate for the respondent No.2 submitted that one writ petition is not maintainable against such many impugned orders passed in these different cases. The revisions were not preferred against the orders of issue process, issue of jurisdiction and interim compensation etc. All other orders are passed with convincing and sound reasons. Those are legal and correct. No interference is warranted in the impugned orders. He lastly submitted to dismiss all the writ petitions.

10. Learned advocate for the respondent No.2 is relying upon the following authorities :-

- i] **2023 DGLS (Bom.) 4467**
[Mukund s/o Manohar Wazalwar Vrs. Eknath s/o Bajirao Hatwar (Dead) through his LRs Durwas Eknath Hatwar and others.] in which it is held that Section 239 of the Code of Criminal Procedure is not applicable to the Summary Proceedings under Section 138 of the Negotiable Instruments Act, 1881.
- ii] **2021 SCC OnLine SC 1174**
[Sunil Todi and others Vrs. State of Gujarat and another.]

The Magistrate having exercised his discretion, it was not open to the High Court to substitute its discretion in case of issue process under Section 138 of the N.I. Act.

11. Nobody will dispute the ratio laid down in the above authorities cited on behalf of both sides. However, it is well settled that each case has to be decided on its own merit and the facts of each case are decisive.

12. Perused all the complaints, all applications along with impugned orders passed on it. Perused grounds of objections raised in these petitions, an affidavit-in-reply and additional affidavit-in-reply filed by the respondent No.2.

13. By the orders dated 22/11/2019, the learned Trial Court issued process in all those cases. The inquiry under Section 202 of the Cr.P.C. was not conducted. The remedy to file revision is available to the petitioner. However, revisions were not filed against said orders of issue process by the petitioner before Sessions Court. The applications for quashing of the complaints u/s 482 of the Cr.P.C. are not filed. However, quashing is prayed in the writ petitions. Therefore, directly filing of writ petitions against the orders of issue process are not maintainable.

14. The applications for discharge were filed by the petitioner in each case. The said applications were not maintainable under Section 239 of the Cr.P.C. as cases filed under Section 138 of the N.I Act are summary cases as held by this Court in the case of **Mukund s/o Manohar Wazalwar**, cited supra. The applications filed for discharge of the petitioner are not maintainable. The said applications were rightly rejected by the Trial Court. No interference is warranted in these orders.

15. The applications filed by the petitioner for production of statement of bank accounts of the respondent No.2 were rejected. These documents were required for hearing of discharge application. The learned Trial Court observed and held that such applications can be moved later on and all applications can be considered when defence leads evidence at proper stage. The petitioner has ample opportunity to lead that evidence. The Court can also compare signatures on it under Section 73 of the Indian Evidence Act. The Court expressed that it will compare signature. It is surprising to note that once issuance of cheques is admitted by the petitioner, how the signature on it can be challenged. There is no scope for interference in these well reasoned impugned orders.

16. The applications filed for comparison and verification

of signature and Handwriting of the petitioner on disputed cheques and each of the page of agreement executed between the petitioner and respondent No.2 were rejected. It is admitted facts that cheques were issued as security. It means signatures are admitted. It is matter of evidence. Those applications were filed to support the applications filed for discharge. The discharge applications were held not maintainable as discussed above. The Trial Court held that petitioner - accused will have opportunity to lead evidence. Application is premature. Thus, petitioner can file the application of same nature after the evidence of respondent No.2 is over, if necessary. Further, Court can compare the signature under Section 73 of the Indian Evidence Act, 1872. Those applications were rejected by the Trial Court by giving convincing reasons. The Trial Court has rightly exercised judicial discretion and interference is not warranted in the impugned orders. Therefore, well reasoned orders passed on those applications require no interference.

17. The applications filed for merge of the charge and clubbing of all the cases together were rejected. The charges were not framed in those cases. In summary cases, charge cannot be framed. It is only statement of accusation to be confronted to the accused and not charge. Therefore, no question of merging of

charge arises. Such applications are not maintainable. As per Section 408 of the Cr.P.C. the application must be moved before the Sessions Court for clubbing those cases. Those applications were also not maintainable before trial court.

18. The applications were filed for dismissal of complaint for want of jurisdiction. Those were rejected. However, those orders are not interlocutory. The revisions before Sessions Court against the orders of Trial Court regarding issue of jurisdiction are to be filed. Those were not filed by the petitioner. In case of rejecting the application challenging the jurisdiction of the court to proceed with the trial, even though it may not be final in one sense, is surely not interlocutory order, substantially it is a final order as held in the case of Jai Prakash Vrs. Radhey Shyam, reported in 1987 (2) Crimes 363, 368 (All). Further, an order rejecting an application challenging the jurisdiction of the court to proceed with the trial is not interlocutory as held in the case of Madhu Limaye Vrs. State of Maharashtra, reported in AIR 1978 SC 47. The revisions against those orders were not filed in the Sessions Court by the petitioner u/s 397 of the Cr.P.C. The writ petitions are not maintainable against the said orders. In case of Ahuja Dongre relied upon by the petitioner, the revision was filed

before the Sessions Court and that Judgment was challenged. In this case, revision is not filed. Thus, it is not helpful to the petitioner. The revision is not filed. Therefore, case of Sayed Mohammed, cited supra by the petitioner is not relied upon.

19. The applications for interim compensation in each case were granted by the Trial Court by orders dated 05/12/2022. All these orders granting interim compensation passed u/s 143-A of the N.I. Act are well reasoned. There is no any illegality and perversity to interfere in it. The revisions were not preferred against those orders u/s 397 Cr.P.C. Therefore, the writ petitions are not maintainable against those orders.

20. In Writ Petition No. 226/2023, an application at Exh.42 was filed for expeditious hearing of the case which was allowed. However, surprisingly that order is also challenged.

21. As held above, no interference is warranted in any of the impugned orders. The judicial mind was applied by the learned Trial Court while passing the orders with convincing reasons. There is no scope for interference in the discretion of Court. Therefore, all writ petitions deserve to be dismissed as held above. For the above reasons, the arguments of learned Advocate

for petitioner are not accepted in all writs. All the writ petitions are dismissed. However, considering the peculiar set of facts, it would be proper to direct the parties to bear their own costs.

[SANJAY A. DESHMUKH, J.]

Choulwar