



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

933 CRIMINAL WRIT PETITION NO. 342 OF 2024

Ashok s/o Hiralal Kabra,
Age : 62 years, Occu.: Business,
R/o.: 23/5, Topidas Lane,
Near Rasrang Misal, Adate Bazar,
Kabrawada, Ahmednagar

... **PETITIONER**

VERSUS

Ajit s/o Rochaldas Tolwani,
Age : 50 years, Occu.: Busienss,
R/o.: Shree Satguru Cloth Stores,
Chowk Bazar, Sindhi Colony,
Aurangabad

.... **RESPONDENT**

...
Mr. Somani Yogesh G., Advocate for the Petitioner
Adv. S. M. Agrawal, Advocate for Respondent
....

CORAM : Y. G. KHOBRADE, J.

DATED : 27/11/2024.

P. C. :

1. Leave to add prayer clause.
2. The necessary amendment be carried out within a period of seven days from today.

3. Rule. Rule made returnable forthwith. With consent of both the sides, the matter is heard finally.

4. By the present petition, the petitioner / original accused has challenged the judgment and order dated 01/01/2024 passed by the learned Revisional Court in Criminal Revision Application No.250 of 2023 whereby the Revisional Court confirmed the order dated 01/08/2022 passed by the learned Judicial Magistrate (First Class), Court No.11, Aurangabad in SCC No.6596 of 2022 thereby issued process against the present petitioner for the offence punishable under Section 138 of Negotiable Instruments Act.

5. The respondent is the original complainant and the present petitioner is the original accused No.3 in complaint SCC No.6596 of 2022.

6. The learned counsel appearing for the petitioner canvassed in vehemence that the petitioner is not a partner of A. S. Enterprises. Though the petitioner is not the signatory or the authorized person for business of accused No.1 A. S. Enterprises, a Partnership Firm, but on 01/08/2022 the learned Judicial Magistrate (First Class) passed an order and issued process as against the present

petitioner -accused No.3. It is further canvassed that in response to service of summons, the petitioner appeared before the learned Magistrate. Thereafter, the petitioner filed a Criminal Revision No.250 of 2023. However, on 01/01/2024 the learned Revisional Court passed the impugned order and confirmed the order of issuance of process passed by the learned Magistrate on 01/08/2022. Therefore, the impugned order is illegal and bad in law.

7. The learned counsel appearing for the petitioner further canvassed that both the courts below have failed to appreciate the provisions of Section 141 of N. I. Act as well as no basic essential ingredients have been brought on record to implead the present petitioner / accused No.3 in the offence punishable under Section 138 of N. I. Act. Therefore, the proceeding initiated by the sole respondent for the offence under Section 138 of N. I. Act as well as order of issuance of process dated 01/08/2022 is itself illegal and bad in law. Hence, prayed to quash and set aside the same.

8. Per contra, the learned counsel appearing for the respondent / complainant canvassed in vehemence that the respondent / complainant filed SCC No.6596 of 2022 and made

specific allegations that accused No.1 is a Partnership Firm. Accused Nos.2 & 3 (petitioner) are the managing partners and authorized signatories of the Partnership Firm (accused No.1). Accused Nos.2 & 3 are dealing with the retail sales of clothes. They purchased goods from the complainant. In order to discharge the legal liability and repayment of price of goods, on 31/05/2022 the accused issued a cheque bearing No.000735 for amount of Rs.12 lakhs, drawn on ICICI Bank, Ambar Plaza Branch, Ahmednagar. The complainant further alleged that accused Nos.2 & 3 are the signatories to the cheque on behalf of accused No.1- Partnership Firm. However, the said cheque was dishonoured. Therefore, on 07/06/2022 the respondent / complainant issued a mandatory notice under Section 138 of N. I. Act and called upon the accused persons including the present petitioner to comply with the notice within a period of 15 days. However, the accused persons failed to comply the said notice. Ultimately, the respondent / complainant has filed the complaint and prayed for action against the accused persons for the offence punishable under Section 138 of N. I. Act.

9. Needless to say that on 01/08/2022 after perusal of an affidavit and documents as well as after conducting enquiry under Section 202 of Cr.P.C. as accused are not residing within its

jurisdiction, the learned Judicial Magistrate (First Class), Aurangabad passed an order and issued process under Section 204 of Cr.P.C. against accused persons including the petitioner for the offence under Section 138 of N. I. Act.

10. No doubt, the petitioner / accused No.3 challenged the order of issuance of process in Criminal Revision No.250 of 2023, however, on 01/01/2024 the learned Sessions Court passed the impugned order and dismissed the revision on ground that the learned trial court after complying necessary compliance under Section 202 of Cr.P.C. issued process as against the present petitioner / accused and others under Section 204 of Cr.P.C. for the offence punishable under Section 138 of N. I. Act and no illegality or irregularity has been found.

11. The petitioner tendered a copy of certificate in Form 'E' of the Indian Partnership Act, 1932, wherein Mr. Sagar Ashok Kabra and Sheetal Krishnakumar Kabra are shown the partners of A.S. Enterprises (accused No.1). The petitioner also produced a copy of partnership deed executed on 27/07/2019. However, the complainant made a specific statement in the complaint that accused Nos.2 & 3 are the partners of accused No.1- A. S.

Enterprises and the petitioner and accused No.2 are the signatories to the cheque in question. The copy of cheque has not been produced on record for verification. Therefore, at this juncture, it cannot be held that the petitioner is not the signatory to the cheque in question. Not only this, the present petitioner along with the Firm and accused No.2 are already served with the mandatory notice. The present petitioner has not replied the said notice. Nonetheless, accused No.2, who is a son of the present petitioner, also not disclosed in his reply that the present petitioner / accused No.3 is not a Partner of accused No.1- A. S. Enterprises. Therefore, disputed question of fact whether the petitioner is a Partner of the accused No.1 – A. S. Enterprises or he is the signatory or not to the cheque in question cannot be adjudicated at this juncture. Therefore, I do not find any fault on the part of the learned Revisional Court while passing impugned order. Therefore, no interference is required at the hands of this court. Accordingly the petition is dismissed. No order as to costs.

(Y. G. KHOBRADE, J.)