



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

84 CRIMINAL WRIT PETITION NO. 714 OF 2023

Rangnath Harichandra Rathod

VERSUS

Tejas Sanjay Pawar

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Advocate for the Petitioner : Ms. Pallavi P. Wangikar h/f Mr. R.V. Gore

Advocate for Respondents : Mr. Suniket A. Kulkarni

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CORAM : SHIVKUMAR DIGE, J.

DATED : 1st JULY, 2024.

PER COURT :-

1. By this writ petition, the petitioner has challenged the order dated 03.12.2022, passed by the learned Judicial Magistrate, First Class, court No.17, Aurangabad (for short "the trial court"), below Exh.25 in S.C.C. No. 792 of 2018.

2. It is the contention of the learned counsel for the petitioner that the petitioner has filed complaint under Section 138 of Negotiable Instruments Act, 1881 against the respondent, which is pending before the trial court. During pendency of the said proceeding, the respondent pleaded before the trial court that the said disputed cheque does not belong to the respondent, as it is not issued by the respondent and the said cheque is from account of one person Shri Lalit Tupe. Thereafter, when the petitioner came to know

this fact, he filed an application under Section 319 of the Code of Criminal Procedure (for short "Cr.P.C.") before the trial court to add Shri Lalit Tupe as co-accused. The said application has been rejected by the impugned order which is under challenge in this petition. Learned counsel further submitted that it is the case of the petitioner that the disputed cheque is issued to the petitioner by the respondent but he was not aware that the said cheque was belonging to Shri Lalit Tupe. When the petitioner came to know this fact, he had filed an application for adding the name of Lalit Tupe as accused. Learned counsel further submitted that the said application ought to have been allowed by the trial court but it has been rejected. Hence, requested to allow the writ petition.

3. It is the contention of learned counsel for the respondent that the petitioner has filed complaint under Section 138 of N.I. Act. As per the parameters of section 138 of N.I. Act, the petitioner had to send notice to the person to whom the disputed cheque belongs. Learned counsel further submitted that no notice was given to Shri Lalit Tupe and no procedure as provided under Section 138 of N.I. Act was followed by the petitioner. Hence, the trial court upon considering all these aspects, passed the well reasoned order. No interference is required in it and requested to dismiss the writ petition.

4. I have heard both learned counsel. Perused the impugned order. The petitioner has filed an application under Section 319 of Cr.P.C. Section 319 (1) of Cr.P.C. is reproduced herein below:-

“319. Power to proceed against other persons appearing to be guilty of offence.- (1) Where, in the course of any inquiry into, or trial of, an offence it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offences which he appears to have committed.”

This section provides that any inquiry into, or trial of, an offence it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offences which he appears to have committed.

5. In the present case, it is the case of the petitioner that disputed cheque was issued to him by respondent but during the course of trial, learned counsel for the respondent has submitted before the trial court that it belongs to Shri Lalit Tupe. As the disputed cheque is belonging to Shri Lalit Tupe hence, he is a necessary party. Whether the parameters of Section 138 of N.I. Act are followed or not is a part of trial and the evidence. But at the

threshold that application under Section 319 of Cr.P.C. cannot be rejected. Hence, it needs interference in the impugned order passed by the trial court and I pass the following order:-

O R D E R

- I) Writ petition is allowed.
- II) The order dated 03.12.2022, passed by the learned Judicial Magistrate, First Class, court No.17, Aurangabad, below Exh.25 in S.C.C. No. 792 of 2018 is quashed and set aside. The application below Exh.25 is allowed. Shri Lalit Tupe be added as a party respondent.
- III) All contentions of both the parties are kept open.
- IV) It is made clear that the trial court, while deciding the pending complaint, shall not get influenced by the observations made in this order and the said complaint shall be decided on its own merits.
- V) The writ petition is disposed of.

(SHIVKUMAR DIGE, J.)

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