



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

71 CRIMINAL APPLICATION NO. 2367 OF 2024

JAYPRAKASH EKNATH DHUT
VERSUS
PAWAN PITAR PATOLE

...
Mr. Pankaj A. Bharat Advocate for Applicant.
...

CORAM: S.G. MEHARE, J.

DATE : 15th JULY, 2024

ORDER :

1. Heard learned counsel for the applicant. The applicant has impugned the order of the learned Additional Chief Judicial Magistrate (Court No.18), Ahmednagar, issuing process under Section 138 of the Negotiable Instruments Act in S.C.C. No.8723 of 2023, dated 11th January 2024.

2. Learned counsel for the applicant would submit that there was a purchase transaction of the land which was claimed to be owned by the respondent/complainant. Initially, there was an agreement to sell, and therefore, a cheque was issued to the complainant for the *earnest amount*. However, the sale deed was subsequently executed, and the entire consideration was paid.

Thereafter, it was transpired that the said land was not belonging to the complainant. It was the land of the municipal corporation. Respondent/complainant had filed a suit for declaration that he owned the said land. The suit was decreed. The Municipal Corporation has preferred an appeal against the said Judgment and decree. The appeal is allowed.

3. Learned counsel for the applicant submits that the complainant assured the present applicant to return the money. However, there was no written contract. The applicant is the victim of the acts done by the complainant. He dishonestly misused the cheque, which was lying to him. On the question put to him, the learned counsel for the applicant submits that the applicant never filed a suit to cancel the sale deed and refund the money.

4. The respondent has a specific case that the disputed cheque was issued towards the legally enforceable debt. He has his own case. The applicant did not dispute the issuance of the cheque. The applicant has stopped the cheque payment, intimating the bank.

5. Learned counsel for the applicant has submitted that this is an abuse of process of law, and the Court erred in issuing the process under Section 138 of the Negotiable Instruments Act.

6. Perused the complaint and the impugned order. Prima facie material was available before the Court to issue the process. Considering the conduct of the applicant, it could not be said that it is an abuse of the process of law. The facts, as they come forward, need to be tested on the touchstone of the evidence before the Court. There is absolutely nothing wrong in issuing the process, and there is no iota of evidence that filing the complaint after the cheque was bounced is an abuse of process of law. The learned Magistrate has applied the mind while passing the impugned order.

7. The Court finds no substance in the application. Hence, the application stands dismissed.

[S.G. MEHARE, J.]