



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

919 CRIMINAL WRIT PETITION NO. 1609 OF 2024

**DATTATRAY VASANTRAO KULKARNI (CHANDORIKAR)
VERSUS
THE STATE OF MAHARASHTRA & ANR**

.....
Advocate for the Petitioner : Mr. Kiran T. Jamdar
APP for Respondents/State : Mr. N.D. Batule
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**CORAM : Y.G. KHOBRAGADE, J.
DATE : 15.10.2024**

PC:-

1. Leave to amend the prayer clause. Amendment be carried out forthwith.
2. Heard the learned counsel appearing for the Petitioner at length. By the present petition under Article 227 read with Section 482 of the Cr.P.C. the Petitioner impugned the order dated 05.08.2024 passed by the learned Additional Sessions Judge, Latur in Criminal Revision No.7/2023 arising out of order dated 21.12.2022 passed by the learned JMFC in RCC No.401/2022, whereby the process as against the present Petitioner/Accused issued for the offence punishable under Section 420 of the I.P.C.
3. In nutshell it is the case of present Petitioner-Accused that,

Respondent No.2/Original Complainant filed a Complaint bearing no.401/2022 alleging that, on 10.08.2021, the agreement between him and the present Petitioner was executed for construction of a two storied building within a period of 365 days on Plot No.13, CTS No.9920 within the municipal limits of Latur Municipal Corporation. It is further alleged that as per the terms of the agreement approximately 4 to 5 feet deep were to be dug with the help of JCB. The present Petitioner-Accused agreed to dug below 12 feet and to execute the plinth work. He further agreed to pay the additional expenses on the same day on the day on which the work was to be completed. Accordingly, on 21.08.2021 the accused issued a cheque no.124061 in a sum of Rs.50,000/- drawn on Latur District Central Cooperative Bank but the said cheque was returned unpaid on account of insufficient funds with bankers memo dated 27.08.2021. The fact of dishonor of cheque was given to the accused but the accused assured the complainant for re-payment of said cheque after he receives the payment and asked to wait for some days.

4. Thereafter, on 02.09.2021 the accused issued another cheque bearing no.642839 dated 02.09.2021 for an amount of Rs.50,000/- drawn on State Bank of Maharashtra, Nilanga Branch with an assurance that cheque would be honored, however when the complainant approached his Bank (Axis Bank) for encashment of the cheque it was revealed that said instrument was

not issued from said branch which is fake. Therefore, the said cheque was returned unpaid. Though the complainant repeatedly requested the Petitioner-Accused for refund of money but the Petitioner-Accused refused to pay the same.

5. The Respondent No.2 specifically made averment that on 10.08.2021 in presence of witnesses an agreement was executed for construction of two storied building. Thereafter, the construction of ground floor with bricks and RCC work was completed, however, though the complainant was ready to complete the construction work but the Petitioner-Accused caused obstruction for execution of the work, therefore the remaining construction work was not completed. As per the terms and conditions of the contract, if the Respondent No.2/Complainant did not get payment within the stipulated period or on time the construction period would be extended and it would stop at that stage. So also, the Petitioner-Accused kept the building material with him and not permitted the Respondent No.2/Complainant to complete the work. The Respondent No.2/Complainant further alleged that he executed the construction work for amount of Rs.9,45,000/-. Since the Petitioner-Accused dishonestly cheated him by issuing fake cheque, therefore, he approached the Shivajinagar Police Station, Latur however, no cognizance was taken. Therefore, he filed a complaint RCC No.401/2022 and prayed to

punish the accused for the said offences.

6. Needless to say that the learned J.M.F.C. recorded the statements of witnesses including the Complainant Shri Chetan Pandharikar and evidence before the charge. On satisfaction that the accused has committed offence punishable under Section 420 of the I.P.C. the learned Magistrate issued the process against the Petitioner-Accused for the offence punishable under Section 420 of the I.P.C.

7. Being aggrieved by the said order the Petitioner-Accused filed a Criminal Revision No.7/2023. On 05.08.2024, the learned Additional Sessions Judge-4, Latur passed the impugned judgment and order holding that the Petitioner-Accused issued cheque no.124061 to the tune of Rs.50,000/- in favour of Respondent No.2/Complainant which has been dishonored for want of sufficient funds. Thereafter, the Petitioner-Accused again issued a cheque bearing no. 642839 in favour of the Respondent No.2/Complainant but the said cheque was returned on the ground it is not issued by the Branch. Therefore, act on part of the accused falls within the ambit for the offence punishable under Section 420 of the I.P.C.

8. On perusal of the impugned order, it further appears that the learned Sessions Court considered the following cases:

- 1) Ramesh Dadarao Bagdure & Anr. V/s. The State of Maharashtra & Anr.; 2023 ALL MR (Cri.) 3656
- 2) M/s. Indian Oil Corporation V/s. M/s. NEPC India Ltd., & Ors; AIR 2006 SC 2780.
- 3) K. Periaswami V/s. Rajendran & Anr.; 1985 Cr. L.J. 1721.
- 4) K. Srinivas V/s. State of Andhra Pradesh; 1997 Cri.L.J. 3997
- 5) Hridaya Ranjan Pd. Verma & Ors. V/s. State of Bihar & Anr.; 2000 Cri.L.J. 2983.

9. The learned Sessions Court held that the Act of the Petitioner-Accused is of deception as the Petitioner-Accused issued a false cheque in favour of the Respondent No.2/Complainant which falls within the ambit of offence punishable under Section 420 of the I.P.C.

10. Since both the Courts below concurrently held that issuance of false cheque on the part of the Petitioner-Accused in favour of the Respondent No.2/Complainant appears to be deception. Therefore, the defence set out by the Petitioner about execution of the agreement between him and the Respondent No.2/Complainant cannot be considered at a nascent stage of the proceeding. Therefore, I do not find any substance in the present petition and hence it is dismissed.

[Y.G. KHOBRADE, J.]