



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1031 CRIMINAL WRIT PETITION NO. 1379 OF 2023

Nandkumar Bhanudas Kulkarni

VERSUS

Vishwas Bhargav Joshi (died) through L.R's Santosh Vishwas Joshi

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Advocate for the Petitioner : Mr. Rajebhosale Sandeep B.

Advocate for Respondents : Ms. Sunita G. Sonawane

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CORAM : SHIVKUMAR DIGE, J.
DATED : 13th AUGUST, 2024.

PER COURT :-

1. The petitioner is challenging the order dated 16.8.2023 passed by the learned Additional Sessions Judge, Aurangabad in Criminal Revision Application No. 152 of 2022 and the order dated 31.5.2022 passed by the learned Additional Chief Judicial Magistrate (for short "C.J.M.") Aurangabad, below Exh. 80 and 84 in S.C.C. No. 505 of 2016.

2. It is the contention of learned counsel for the petitioner that the petitioner had issued cheque to one partnership firm. The respondent and his father were the partners of the said firm. During pendency of the complaint under Section 138 of Negotiable Instruments Act, the respondent's father died. As the partnership firm was of two partners and one partner is died, as per the provisions of Section

43C of the Partnership Act, the partnership is dissolved. The petitioner had given cheque to the partnership firm and not to individual. As partnership firm is dissolved the petitioner cannot be held liable under Section 138 of Negotiable Instruments Act. But these facts are not considered by the trial court and the Sessions Court. The learned counsel further submitted that as per the Section 256 of the Cr.P.C. as the complainant is died, the trial court should have acquitted the petitioner from the charges levelled against the petitioner and requested to allow the writ petition. Learned counsel for the petitioner relied on the following authorities of this Court as well as the Hon'ble Apex Court:-

- i) Order of this court in criminal writ petition No. 657 of 2022 decided on 09.02.2023.
- ii) S. Rama Krishna vs. S. Rami Reddy (D) his L.Rs. and others, 2008 All MR (Cri) 1751 (S.C.).
- iii) Vamsi Labs Private Limited vs. Alpine Laboratories and others, 2019 DGLS (Bom) 1997
- iv) Columbia Hospital and Recentre Private Limited vs. Maharashtra Industries, 2022 DGLS (Bom) 1276,
- v) Hukumchand Bhaulal Patani and others vs. Dhanlal Premraj Kale and others, 2010 (3) Bom.C.R. 162

- vi) Mohammad Laiquiddin and another vs. Kamala Devi Misra (dead) By L.Rs. And others (2010) 2 SCC 407
- vii) Subbanna Hegde and others vs. Dyavappa Gowda, 1980 SCC Online Kar 83.
- viii) Sivakumar vs. Natarajan, 2009 ALL MR (Cri). 2165 (S.C.)
- ix) Vishnupant Chaburao Khaire vs. Kailash Balbhir Madan, 2010(1) LAWDIGITAL.IN 1349
- x) S.P. Misra and others vs. Mohd. Laiquiddin Khan and Anr. 2020 ALL SCR 170,
- xi) Commissioner of Income Tax M.P. Nagpur and Bhandara vs. Seth Govindram Sugar Mills, 1965 ALL MR ONLINE 167.
- xii) Khatema Fibres Limited vs. M/s. N.K. Paper Tube Industries and another, 2012 (2) Crime 339.

3. It is the contention of learned counsel for the respondent that the petitioner had issued cheque towards legal liability to the partnership firm of the respondent and as the cheque issued by the petitioner was dishonoured hence the complaint was filed against the petitioner under Section 138 of Negotiable Instruments Act in the year 2012. In the year 2020 one of the partner of the partnership firm is died. Thereafter, the petitioner had filed an application under Section 256 of Cr.P.C. before the trial court for acquitting him from

the said offence. The said application was rejected by the trial court. Then it was challenged before the Sessions Court. The Sessions Court also rejected the Revision Application. Then it was challenged before this Court. This Court has also dismissed the said writ petition. The said order was challenged before the Hon'ble Apex Court. It was confirmed. The issue raised by the petitioner has already been decided by this Court and confirmed by the Hon'ble Apex Court. The petitioner is filing the applications only to prolong the matter. Now the matter is for recording the statement of the petitioner under Section 313 of Cr.P.C. Considering these facts, she requested to dismiss the writ petition.

4. I have heard both the learned counsel. Perused the impugned orders passed by the trial court and the Additional Sessions Judge. The petitioner is praying for acquittal from the complaint under Section 138 of Negotiable Instruments Act, as one of the partner of partnership firm is died. Hence as per the provisions of Partnership Act, the said partnership firm has been dissolved. The learned Sessions Judge in his impugned order has observed that earlier the same issue was raised by the applicant, it is rejected by this Court (Coram: K.C. Sant, J.) and the said order is confirmed by Hon'ble Apex Court. On that ground the learned Sessions Judge has dismissed the revision application. I do not find infirmity in it. In my

view, the issues raised by the petitioner are already dealt with by this Court. It appears that only to prolong the matter, these issues have been again raised.

6. I have gone through the case laws cited by the learned counsel for the petitioner. The facts of the cited case laws and present case are different, as in the present case, the issue raised by the petitioner has already been decided. In view of the above, I pass the following order:-

O R D E R

The writ petition is dismissed.

(SHIVKUMAR DIGE, J.)

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