



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 CRIMINAL WRIT PETITION NO. 1558 OF 2019

Multi Media Features Pvt. Ltd. Through Its Representative
Moreshwar Punju Dere

VERSUS

The State of Maharashtra and another

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Advocate for the Petitioner : Mr. Kalani Pravin N.

APP for Respondent No.1: Mr. P.K. Lakhotiya

Advocate for Respondent No.2 : Mr. Bhushan Dhaware

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CORAM : SHIVKUMAR DIGE, J.

DATED : 9th AUGUST, 2024.

PER COURT :-

1. By this writ petition, the petitioner has challenged the order dated 28.02.2019 passed by the Additional Sessions Judge, Jalgaon in Criminal revision application No. 12 of 2019.

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 against Pritesh Thakur and respondent No.2 Pankaj Bhadane. The learned Judicial Magistrate First Class (for short "the trial court") has passed order to issue process against both the accused. The respondent No.2 had challenged the said order before the Sessions Court alleging that he is not signatory on the said cheque and there was agreement between respondent No.2,

accused No.1 and also the complainant. So at the most, it would be a civil dispute and the respondent No.2 cannot be held responsible for issuance of the cheque by original accused No.1, as he is not signatory nor he had handed over the said cheque to the petitioner and the said cheque is not belonging to respondent No.2. Learned counsel further submitted that the Sessions Court has not considered the fact that there was agreement between the petitioner, accused No.1 and respondent No.2 and on the basis of that agreement, accused No.1 had issued cheque in favour of the petitioner, which is dishonoured, hence, respondent No.2 can be tried under section 138 of Negotiable Instruments Act. The order passed by the learned Sessions Judge is erroneous. Hence, requested to allow the writ petition.

3. It is the contention of learned counsel for respondent No.2 that the cheque is issued by accused No.1 to the petitioner. The cheque belongs to accused No.1 and it is signed by accused No.1. There is no signature of respondent No.2 on the said cheque. Though there is agreement between the petitioner, accused No.1 and respondent No.2, for the said transaction, the petitioner can avail the civil remedy but respondent No.2, cannot be held responsible under Section 138 of Negotiable Instruments Act. Learned Sessions Judge has considered this fact and on that basis well reasoned order is passed

by the Sessions Judge. No interference is required in it and requested to dismiss the writ petition.

4. Learned A.P.P. submitted that the appropriate order may be passed.

5. I have heard all the learned counsel. Perused the impugned order passed by the learned Sessions Judge. Admittedly, there was an agreement between the petitioner, accused No.1 and respondent No.2. In respect of the said transaction, it is alleged that the accused No.1 has issued cheque in favour of the petitioner, which is dishonoured. The petitioner has filed complaint under Section 138 of Negotiable Instruments Act against accused No.1 and respondent No.2. It is the contention of learned counsel for the petitioner that respondent No.2 is a party to the agreement executed between him and accused No.1. Hence, respondent No.2 is also responsible for the cheque issued by the accused No.1, but the said fact is not considered by the Sessions Court. Learned Sessions Judge has observed that though there is agreement between the petitioner, accused No.1 and respondent No.2, but the petitioner has civil remedy to make recovery of amount as respondent No.2 is not signatory nor on the body of the firm of accused No.1. Accused No.1 independently issued the said cheque and the firm is proprietary firm.

As accused No.1 has independently issued the cheque and he is only signatory of the said cheque, respondent No.2 cannot be tried under section 138 of Negotiable Instruments Act. I do not find any infirmity in it. In my view, the cheque stands in the name of accused No.1, he has signed it, he has issued the same to the petitioner in respect of the transaction between them. Considering, this fact, I pass the following order:-

O R D E R

The writ petition is dismissed.

6. It is made clear that the observations made in this order are to the extent of deciding this writ petition only and the trial court shall not get influenced by the same.

(SHIVKUMAR DIGE, J.)

rlj/