



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

1028 CRIMINAL WRIT PETITION NO. 1837 OF 2023

SANTOSH SUKHDEO TEZAD

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocates for the Petitioner : Mr.Deshpande Jagdish V. & Shivaji N.
Dudhate

APP for Respondent/State : Mrs.D.S. Jape

Advocate for Respondent no.2: Ms. Harsha Lomate h/f Mr.Salunke
Vasant Digambarrao

...

CORAM : **SHIVKUMAR DIGE, J.**

DATE : 6th September, 2024.

P.C.:

1. By this writ petition, the petitioner has challenged the order passed below Exhibit-9 dated 18th April, 2023 in S.C.C. No.160 of 2020 passed by the Judicial Magistrate, First Class at Ambad (for short, "trial Court").

2. It is contention of the learned counsel for the petitioner that the respondent has filed complaint against the petitioner under section 138 of the Negotiable Instruments Act, 1881 (for short, "N.I. Act") alleging that the petitioner has issued cheque to respondent no.2 towards alleged liability of Rs.8,75,010/-, which is consideration amount of purchase of the land in Gat No.255 at Bhabulgaon, Tq. Vaijapur, Dist.Aurangabad. It is alleged that the said cheque was dishonoured, hence the complaint under section 138 of the N.I. Act is filed by the respondent no.2 against the petitioner. The learned counsel further

submitted that the trial Court has passed the order under section 143-A of the N.I. Act directing the petitioner to deposit 20% of cheque amount, which is erroneous as no plea of the petitioner was recorded and before recording the plea, the impugned order was passed and requested to allow the writ petition.

3. It is contention of the learned counsel for respondent no.2 that the cheque issued by the petitioner in favour of respondent no.2 has been dishonoured. As per amended provisions of section 143 of the N.I.Act, the learned Magistrate has passed the well reasoned order. No interference is required in it and requested to dismiss the writ petition.

4. The learned APP submits that the appropriate order be passed.

5. I have heard all the learned counsel. Perused the impugned order passed by the trial Court.

6. The trial Court has directed the petitioner on the application of respondent no.2 below Exhibit-9 to pay interim compensation of 20% of the amount of the disputed cheque to respondent no.2 within 60 days from the date of this order. It appears from the record that the date of cheque is 18th February, 2020 and date of order of interim compensation is 18th April, 2023 and thereafter the plea of the petitioner is recorded on 20th October, 2023. It shows that the impugned order has been passed before recording of the plea of the petitioner.

The Hon'ble Apex Court in the case of ***Rakesh Ranjan Shrivastava Vs. State of Jharkhand and another (2024) 4 SCC 419*** has held that in case of summary or summons trial, the power under sub-section (1) of section 143A of the N.I. Act can be exercised after the plea of the accused is recorded. In this case, the order of the learned trial Court to pay interim compensation to respondent no.2 is before recording of plea of the petitioner. Considering these facts, I pass the following order :-

ORDER

- (i) The writ petition is allowed.
- (ii) The order passed below Exhibit-9 dated 18th April, 2023 in S.C.C. No.160 of 2020 passed by the Judicial Magistrate, First Class at Ambad is quashed and set aside.
- (iii) The Judicial Magistrate, First Class, Ambad is requested to dispose of the pending complaint as early as possible.

[SHIVKUMAR DIGE, J.]

sga