



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

914 CRIMINAL APPLICATION NO. 169 OF 2025

SURESH PUNJARAM JADHAV

VERSUS

KAKASAHEB SUDAMRAO JARHAD AND ANOTHER

....

Mr. Ramijkha K. Pathan, Advocate for the Applicant

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 07.02.2025

PER COURT :-

1. Heard at length Adv. Mr. Pathan, the learned counsel for the Applicant.
2. By the present Application under Section 482 of the Code of Criminal Procedure, the Applicant prayed for quash and set aside the order of issuance of process dated 08.05.2023 passed by the learned Judicial Magistrate First Class, Badnapur, Dist. Jalna as well as Criminal Complaint S.C.C. No.102 of 2023 instituted for the offence under Section 138 of the Negotiable Instrument Act.
3. The learned counsel for the Applicant canvassed that, in the year 2011, the Non-applicant No.1 / Complainant was

partner of the present Applicant (original accused). In the year 2011, the agreement was executed for supply of labour with Mahesh Sugar and Power Limited Mehkar. While execution of the said agreement, the Mahesh Sugar factory had obtained a cheque towards security of contract. In the second week of June 2011, the present Applicant / accused was suffering from illness and he was not able to travel to Mahesh Sugar and Power Limited for giving security cheque for sugarcane session 2011-12. On 14.06.2011, the Non-applicant No.1 / Complainant approached him and disclosed about necessity of cheque towards security for Mahesh Sugar and Power Limited. The Complainant assured him that, he would handover cheque to the said sugar factory. Since the Non-applicant No.1 / Complainant was his good friend, therefore, he (Applicant-Accused) trusted to the Non-Applicant No.1 / Complainant and handed over three blank cheques bearing Nos.861319, 861320 and 861321 of the State Bank of India, Shendra Branch, Aurangabad. However the Non-applicant No.1 / Complainant misused said cheques and filed a complaint. Therefore, the Non-applicant No.1 has misused of process of law and continuation of proceeding would amount to abuse of process of law, hence, prayed for quash and set aside the Complaint as well as the order of issuance of process passed on 08.05.2023 in S.C.C. No.102 of

2023 by the learned J.M.F.C., Badnapur, Dist. Jalna.

4. Needless to say that, Non-applicant No.1 / Complainant filed a complaint bearing S.C.C. No.102 of 2023 alleging that, he is well acquainted with the accused / Applicant. He was serving with the accused / Applicant being Supervisor. He was tempted by the accused / Applicant to work with sugar factories on daily wages basis of Rs.300/- per day i.e., Rs.9,000/- per month excluding other allowances and had assured to increase of salary in future. The Non-applicant No.1 / Complainant further alleged that, the accused had convinced him to purchase a truck for transportation of the sugarcane in sugar factory. However, some blank cheques were obtained by the accused. In the year 2016 some amount between him and accused out of transaction was settled.

5. Accordingly, on 06.03.2023, the Applicant/accused issued a cheque No.861319 drawn on State Bank of India Shendra Branch, Aurangabad for amount of Rs.17,50,000/- towards discharge of legal liabilities. On 06.03.2023, the Non-applicant No.1/Complainant presented said cheque with his banker Samarth Bank Badnapur, however, said cheque returned unpaid with endorsement of "fund insufficient" with bank memo dated 14.03.2023. Again the

complainant deposited said cheque on 29.03.2023 with his banker for encashment but again it was returned unpaid on ground of “fund insufficient.” Therefore, on 31.03.2023, he issued a mandatory notice under Section 138 of N.I. Act and called upon the Applicant/accused to comply with said notice within 15 days from receipt of notice but the Applicant/accused did not comply with the notice and replied it stating that, the Non-applicant No.1/Complainant initiated 138 proceeding on imaginary basis and denied legal liabilities to pay any sum to the Non-applicant No.1/Complainant.

6. Needless to say that, defence of the accused cannot be the sole ground for quashment of the Criminal Proceeding by invoking Section 482 of Cr.P.C. As per the Provisions of Section 204 of Indian Penal Code, if the Magistrate is of opinion that, the Complainant has made out cognizable offence and there is sufficient ground for proceeding in that case, the Magistrate is empowered to issue the process.

7. In case-in-hand it *prima facie* appears that, the Non-applicant No.1/Complainant instituted the complaint No. S.C.C. No.102 of 2023 on ground that, on 06.03.2023, the Applicant/accused issued a cheque No. 861319 for discharging legal liabilities

but it was dishonored on 14.03.2023 under cheque return memo on ground of “fund insufficient”. Though he again presented said cheque for encashment with his banker but again it was returned unpaid with endorsement of “fund insufficient” in the account of the accused on 29.03.2023. Thereafter, he issued legal notice on 31.03.2023 and called upon the Applicant/accused to comply with the said notice but no compliance has been made, hence, to my view essential ingredients of the offence u/s 138 of N.I. Act constitutes. Therefore, I do not find substantial ground for quashment of the proceeding as well as for set aside the order of issuance of process. Hence, the Criminal Application is dismissed.

[Y. G. KHOBRAGADE, J.]