



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

CRIMINAL WRIT PETITION NO. 304 OF 2025

M/S. G. S. Constructions
Prop. Sushil Govindrao Uttarwar .. Petitioner

Versus

Abhang Govindrao Bhusagare .. Respondent

**AND
CRIMINAL WRIT PETITION NO. 306 OF 2025**

M/S. G. S. Constructions
Prop. Sushil Govindrao Uttarwar .. Petitioner

Versus

Abhang Govindrao Bhusagare .. Respondent

Shri Vivekanand M Maney, Advocate for the Petitioner in both matters.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 18TH MARCH, 2025.**

FINAL ORDER :

. Heard Mr. V. M. Maney, learned counsel for the petitioner in both matters.

2. The facts and circumstances are identical in both the matters and, therefore, by common order both the petitions are decided. The petitioner is original accused who is facing prosecution initiated by the respondent U/Sec. 138 of the

Negotiable Instruments Act. The Trial Court passed orders of issuance of process on 04.07.2023 in S.C.C. No. 718 of 2023 and in another case on 21.09.2023 in S.C.C. No. 733 of 2023. Against those orders criminal revision applications were preferred. By distinct judgment and orders the revisions were dismissed.

3. The respondent was sublet the contract by the petitioner for construction of storage tank of Kolgaon, Tq. Mukhed, Dist. Nanded. There was agreement executed between the parties. There was correspondence between them on 02.01.2023 as well as 14.03.2023. The cheque for an amount of Rs. 20,00,000/- in the first matter and Rs. 10,00,000/- in another matter issued by the petitioner were dishonoured, which was the cause for the respondent to approach criminal court.

4. Learned counsel for the petitioner submits that there is total non application of mind in issuing process against the petitioner as there was no legally enforceable debt. The cheques in question were issued to the respondent for total different purpose and those were misused by the respondent. He would advert my attention to clause No. A of the agreement and the correspondence dated 02.01.2023 and 14.03.2023. It is submitted that the Trial Court as well as revisional Court committed grave error of jurisdiction in not properly appreciating the transaction between the parties. It is further submitted that there is clause of arbitration in the agreement and the respondent could have resorted to the alternate forum instead of approaching the

criminal court. It is submitted that no prima facie case is made out for offence U/Sec. 138 of the Negotiable Instruments Act and the complaints filed by the respondent are liable to be quashed.

5. I have gone through the agreement executed between the parties, correspondence and the complaints filed by the respondent against the petitioner. There is no dispute that the petitioner issued cheque of Rs. 20,00,000/- in the first matter and Rs. 10,00,000/- in another matter to the respondent, which were dishonoured. It is also admitted fact that the work of construction was undertaken by the petitioner and it was sublet to the respondent. Agreement was executed between the parties on 02nd March, 2022.

6. It is evident from the complaints that the petitioner had received amount from the Government. The respondent was executing work of construction as per agreement. Due to investment of amount of Rs. 1,40,00,000/-, he was expecting the payment from the petitioner. In pursuance of such a business transaction, the cheques in question were issued to the respondent.

7. The Trial Court as well as revisional Court properly dealt with the matter in order to find out as to whether prima facie case is made out or not. I do not find any perversity or patent illegality in issuing process against the petitioner. Considering the complaints as it is, I find that the trial Court has properly

applied its mind in issuing process, which is rightly confirmed by the revisional Court.

8. The contention of the petitioner that it was not legally enforceable debt can be dealt with extensively during the course of trial. Prima facie, there is material against the petitioner to proceed against it for the offence in question. At this stage of the proceeding, it is not expected of the Trial Court or the revisional Court to go into the terms of the agreement between the parties, the alternate remedy and the purpose for which the cheques were issued. It would be open for the petitioner to take all the pleas available to it during the course of trial. In that view of the matter, I do not find that any case is made out. Hence I pass following order.

O R D E R

- a. Both the criminal writ petitions are dismissed.
- b. The trial Court shall not be influenced by the observations made in this order.

[SHAILESH P. BRAHME J.]

bsb/March 25