IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1661 OF 2024

SAMPAT BABURAO KAWADE
VERSUS
BHARTIYAM MULTI STATE COOPERATIVE CREDIT SOCIETY LIMITED.

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Shri Amit Yadkikar, Advocate a/w Shri Akshay D. Kulkarni, Advocate for the applicant.
Shri Sudheer R. Zambare, Advocate for the respondent.

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CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 19 September 2025
Pronounced on : 24 September 2025

ORDER :-

1. By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicant is praying for quashing the proceedings bearing S.C.C. No.4260/2023 pending on the file the learned Chief Judicial Magistrate, Ahmednagar, under Section 138 of the Negotiable Instruments Act, 1881.

2. On 10.07.2023, the respondent society has instituted S.C.C. No.4260/2023 against the applicant on account of dishonouring of cheque No.017493 for an amount of Rs.17 lacs

with remark 'funds insufficient'. The respondent stated that the applicant stood as guarantor for borrowers, namely, Sandhya Ashok More and Ashok Dinkar More, who are members of the respondent society. The borrowers has obtained loan of Rs.25 lacs on 17.09.2020 from the respondent society. Since said borrowers have not repaid loan installments within stipulated period, therefore, liability of clearing dues fell upon the applicant. The applicant towards discharge of said dues, tendered cheque No.017496 for an amount of Rs.8,15,000/- on 20.10.2021. However, said cheque was dishonoured. Therefore, the respondent society instituted SCC No.5770/2021. During the pendency of said proceedings, the present applicant paid Rs.8,15,000/- to the respondent society. As such, earlier SCC No.5770/2021 came to be withdrawn by the respondent on 04.05.2023.

3. According to the applicant, it was expected from the respondent society that other blank cheques, which were given towards security, would be returned to him upon credit of aforesaid amount of Rs.8,15,000/-. Therefore, on 09.05.2023, the applicant had addressed communication to the Chairman/

Managing Director of respondent society with request for return of blank signed cheque bearing Nos.017492, 017493, 017494 and 017495, which were kept as security. The applicant has made similar applications on same day i.e. on 09.05.2023 to the Police Station, Bhingar, Ahmednagar and also to the District Deputy Registrar, Cooperative Societies, Ahmednagar, apprehending misuse of said cheques. He also made similar request on 09.06.2023 to the Secretary to Central Cooperative Registrar, Delhi. However, he learnt that the respondent society deposited cheque bearing No.017493 projecting it to be of date 04.05.2023 thereby, entering an amount of Rs.17 lacs on the said cheque. On 12.05.2023, said cheque came to be dishonoured for the reason 'funds insufficient'. Thereafter, notice dated 09.05.2023 was issued by the respondent to the applicant. The applicant replied said notice vide reply dated 19.06.2023. Thereafter, the respondent society has initiated the impugned proceedings on 10.07.2023 and the learned Additional Chief Judicial Magistrate, Ahmednagar, was pleased to issue process against the applicant vide order dated 20.07.2023. In such circumstances, the applicant has approached this Court for quashment of said proceedings.

4. According to learned advocate for the applicant, the respondent society was in possession of signed blank cheques of the applicant. Using one of cheques, initially SCC No.5770/2021 was filed wherein, amount sought to be recovered was Rs.8,15,000/-, which was paid in said proceedings. It is obvious that the respondent is keen in implicating the applicant in criminal prosecution to extract money on the basis of signed blank cheques. According to him, action of the respondent society is evidently an abuse of process of law. He invited my attention to the fact that cheque No.017496 was used for amount of Rs.8.15 lacs for which earlier proceedings were initiated and the applicant vide communication dated 09.05.2023 requested for return of other signed blank cheque Nos.017492, 017493, 017494 and 017495 as he was apprehending that same would be used for extracting money from him. Learned advocate also pointed out the communications dated 09.05.2023 issued to the Police Station and also to the District Deputy Registrar, Cooperative Societies, wherein, the applicant had requested for return of cheques. However, the respondent society misused cheque No.017493, dishonour of which resulted in filing of impugned proceedings.

5. Learned advocate for the applicant submitted that the learned Magistrate, while passing the order of issuance of process, did not apply mind and did not see whether, on a particular date there exists legally recoverable debt from the applicant or not. He submitted that loan which was borrowed by main borrowers was of Rs.25 lacs, out of which, Rs.8.15 lacs were repaid by the applicant. Even though the loan period was in existence and continuing, the respondent society submitted cheque of remaining amount of Rs.17 lacs. According to him, the loan period was going on and it has not come to end, still without assessing actual outstanding amount payable to the respondent society by borrowers, the respondent society had presented cheque of Rs.17 lacs. On this count, impugned order passed by the learned Magistrate and impugned proceedings, are required to be quashed and set aside.

6. *Per contra*, learned advocate for the respondent society strongly opposed the prayer. According to him, action taken by the respondent is legal and proper. The applicant is guarantor of borrowers and the respondent society is entitled to recover entire loan amount from him. Cheque of Rs.17 lacs was

submitted to the bank prior to issuance of letter dated 09.05.2023 by the applicant for returning cheques. He, therefore, prayed for rejection of instant application.

7. After going through records and arguments advanced by learned advocates for respective parties, it is crystal clear that the loan was obtained by borrowers, namely, Sandhya Ashok More and Ashok Dinkar More, on 17.09.2020 and it was to be repaid within five years. The said repayment period of five years is still continuing and is not over. In earlier proceedings bearing SCC No.5770/2021, amount of Rs.8,15,000/- was paid by the applicant. In view of such event, as to how amount of Rs.17 lacs came to be assessed by the respondent society for recovering the same from the applicant alone, has not been explained by the respondent. Admittedly when the repayment period of loan is still continuing, complete loan amount is sought to be recovered from the present applicant. Therefore, it is inappropriate to claim that the applicant is liable to pay legally recoverable debt on the date of presentation of cheque of Rs.17 lacs. The learned Magistrate has overlooked this aspect of legally recoverable debt against the applicant. The aspect of legally

recoverable debt is *sine qua non* for issuance of process under the Negotiable Instruments Act, 1881.

8. The Honourable Supreme Court in ***JM Laboratories and others vs. State of Andhra Pradesh and another, reported in 2025 SCC Online SC 208***, has observed that the order of issuance of process is not an empty formality and the learned Magistrate is required to apply his mind as to whether, sufficient ground for issuance of process does exist or not. Formation of such opinion is required to be stated in the order itself.

9. In ***Lalankumar Singh and others vs. State of Maharashtra reported in 2022 SCC Online SC 1383***, the Honourable Supreme Court has observed that wide discretion has been given as to grant or refuse issuance of process and, therefore, it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a *prima facie* case has been made out, the learned Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

10. In the present case, there being no reason in support of the order of issuance of process. It is clear from the order of

the learned Magistrate that same is passed in mechanical manner. The case for issuance of process under Section 138 of the Negotiable Instruments Act, 1881, requires complete verification at least an aspect of legally recoverable debt against the proposed accused. The learned Magistrate having failed to do so, impugned order as well as impugned proceedings are, therefore, abuse of process of law and as such, requires to be quashed and set aside. Hence, the following order:-

ORDER

(a) The application is allowed.

(b) The impugned order of issuance of process dated 20.07.2023 as well as the impugned proceedings bearing S.C.C. No.4260/2023 pending on the file the learned Chief Judicial Magistrate, Ahmednagar, under Section 138 of the Negotiable Instruments Act, 1881, are quashed and set aside.

kps **(SUSHIL M. GHODESWAR, J.)**