2025:BHC-AUG:3514

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 CRIMINAL APPLICATION NO. 2430 OF 2023

TEJAS GOPALJI SOMANI
VERSUS
BALAJI MADHUKAR CHAME

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Mr. Pravin N Kalani, Advocate for the Applicant
Mr. Rajendrraa Deshmukh, Senior Advocate a/w. Adv. Nimish More i/b.
Mr. S.N. Morampalle, Advocate for the Respondent
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CORAM : Y.G. KHOBRAGADE, J.
DATE : 04.02.2025

P.C.:-

1. Heard Mr. Kalani, the learned counsel appearing for the Applicant, Mr. Rajendrraa Deshmukh, learned senior counsel a/w. Adv. Nimish More i/b. Advocate Mr. S.N. Morampalle for the Non-Applicant at length.

2. By the present application under Section 482 of the Cr.P.C., the Applicant prays for quashment of criminal complaint bearing SCC No.835/2020 pending on the file of the learned JMFC, Latur for the offence punishable under Section 138 of the N.I. Act.

3. The present Non-Applicant is the Ori. Complainant and the Applicant is the Accused in criminal complaint bearing SCC No.835/2020. For

the sake of brevity, I would like to refer the parties to the present application in their original capacity.

4. Indeed, the Complainant filed a criminal complaint SCC No.835/2020 for the offence punishable under Section 138 of the N.I. Act. It is alleged that, on 19.12.2019, the Accused- Mathura Sales Corporation issued a cheque bearing no.524199 for a sum of Rs.Fifty Lakhs drawn on Sangli Urban Cooperative Bank Ltd., Shakha Khanbagh, Sangli, to discharge the legal liability. Accordingly, said cheque was submitted by the Complainant with his banker for encashment. However, on 16.01.2020, said cheque was returned unpaid with the bank cheque return memo on the ground of 'funds insufficient'. Accordingly, the Complainant issued the mandatory notice on 12.02.2020 under Section 138 of the N.I. Act and called upon the Accused to comply with the notice within a period of 15 days. On 15.02.2020, the Accused was served with the notice but he failed to comply with notice within the stipulated period. Therefore, the Accused has committed an offence punishable under Section 138 of the N.I. Act. After recording verification u/s 200 of Cri.P.C., the learned J.M.F.C. passed the order and issued process against the accused for the offence under Section 138 of the N.I. Act.

5. The learned counsel appearing for the Applicant/Accused canvassed in vehemence that after service of summons, the present

Applicant/Accused appeared before the learned JMFC and contended that, the subject matter of cheque of the complaint was already encashed by the Complainant on 12.04.2018 through transfer of NEFT to SBI Branch, Sangli for an amount of Rs.1,45,000/-. Therefore, the Respondent/Ori.Complainant along with the Branch Manager of HDFC Bank, Latur, have committed fraud, mischief, cheating and criminal breach of trust punishable under the provisions of the I.P.C. So also, there is no legally enforceable liability as against the present Applicant/Accused, hence, offence under Section 138 of the N.I. Act does not constitute. Therefore, continuation of criminal proceeding would amount to abuse of process of law and prayed for quashment of the said complaint.

6. Per contra, the learned senior counsel appearing for the Non-Applicant/Complainant canvassed that as per the averment made in the complaint, on 19.12.2019, the Applicant/Accused issued a cheque bearing no.524199 for an amount of Rs.Fifty Lakhs drawn on Sangli Urban Cooperative Bank Ltd., in favour of the Complainant. Accordingly, the Non-Applicant/Complainant deposited said cheque for enacashment with his Banker HDFC, Latur Branch but the said cheque was returned unpaid on account of 'insufficient funds' under cheque return memo dated 16.01.2020. Thereafter, on 12.02.2020, a legal notice under Section 138 of the N.I. Act

was issued. The Applicant/Accused was duly served with the mandatory notice on 15.02.2020 but he has failed to comply within stipulated period.

7. No doubt, the Applicant/Accused has produced photocopy of the cheque no.524199 for an amount of Rs. Fifty Lakhs drawn in favour of New Tech Engineering Services from the A/c No.0030043010001383 which is the subject matter of the complaint. The cheque return memo appears that the cheque no.524199 drawn on Sangli Urban Cooperative Bank Ltd. was dishonored due to insufficient funds.

8. According to the Applicant/Accused, on 12.04.2018, the cheque no.524199 was already encashed through NEFT to SBI Branch, Sangli. However, this defence is required to be proved by the Applicant/Accused by a cogent evidence in trial and said defence cannot be considered at the initial stage. The statement of bank account produced on record by the Applicant/Accused cannot be considered by this Court unless it is proved by the Applicant/ Accused within the meaning of Section 3 of the Evidence Act. Therefore, I do not find that the Applicant has made out any substantial grounds for quashment of the proceeding.

9. In view of above, the application is dismissed.

[Y.G. KHOBRAGADE, J.]

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