



(1)

WP-1589-2022

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1589 OF 2022

Shri. Lavesh Munnalal Paliwal

Age: 56 years, Occu: Business
R/o. Shop No. 145, Ground Floor,
New B. J. Market, Jalgaon,
Tal. & Dist. Jalgaon.

...Petitioner

VERSUS

1. The State of Maharashtra

Through Public Prosecutor
High Court Aurangabad.

2. Shri. Charanjitsingh,

Age: 40 Years, Occu: Business

3. Shri. Avatalsing Mangalsing Gujral

Age: 78 years, Occu: Business,

Both R/o. 1331, Krishna Nagar,
Civil Line, Ludhiana 141001.

...Respondents

...

Mr. Mangesh G. Patil, Advocate for Petitioner.

Mr. R. B. Dhaware, APP for Respondent-State.

CORAM : KISHORE C. SANT, J.

DATE : 27th JUNE 2025

PC :-

1. Though served, none appears for Respondent Nos.2 and 3. This

Court has, therefore, decided to proceed with the hearing of the petition.

2. Heard Mr. Patil, the learned Advocate for the Petitioner, Mr. Dhaware, the learned APP for the Respondent-State, finally at the stage of admission.

3. The present writ petition arises out of a judgment and order dated 17th August 2022, passed by the learned Additional Sessions Judge, Jalgaon, in Criminal Revision Application No.03 of 2020. By allowing the Revision Application of Respondents, the order dated 30th October 2018, passed by the learned Judicial Magistrate, First Class, Jalgaon, in RCC No.690 of 2018, issuing process against accused No. 3 and 4, for an offence punishable under Sections 465, 409, and 471 of the Indian Penal Code, 1860 (for short "IPC") is set aside. The petitioner is the original complainant in the proceeding before the learned Magistrate. The complainant had filed an application seeking direction under Section 156(3) of Cr.P.C.

4. It is the case of the complainant that, he is in the business of seeds, fertilizer and insecticides, having a shop in the name of "Farm Input

Trading Company". He was appointed as a distributor by a company namely, "Modern Insecticides Ltd". The present respondent Nos. 2 and 3/accused Nos. 2 and 3, were the Directors of the said Company. The complainant had given four signed blank cheques of "The Akola Urban Co-operative Bank" towards security. The accused had assured him that they would not use and present those cheques in the bank. The complainant, thereafter, closed the said account and opened a new account with another bank namely, "Central Bank of India" by informing the accused persons on 22nd October 2016. He then gave four other cheques of Central Bank of India with the numbers given in the complaint.

5. In 2016, the complainant placed an order for supply of some material. The delivery was to be given as per schedule. However, the accused persons failed to supply the material as ordered. Some material was sent after its expiry date and at a higher rate. The complainant, therefore, refused to pay the bill, asking the accused persons to take back the material. However, the accused persons presented the cheques

in the bank. As the complainant had already stopped payment, the cheques were returned back to the accused.

6. Notice was issued by the accused for payment of cheque amount. In reply to the notice, the complainant stated that he was not liable to pay any amount. He asserted that the cheques were presented fraudulently. However, the respondents filed a complaint under Section 138 of the Negotiable Instruments Act in the Court at Ludhiana.

7. The complainant received a summons on 13th August 2017. It is on this, the complainant came to know that cheques are misused and an offence of criminal breach of trust is committed. He, therefore, filed an application in the Court at Jalgaon. The learned JMFC recorded the verification and upon that, issued process against accused Nos. 2 to 4 under Sections 465, 409 and 471 of the IPC.

8. The original accused/present respondent Nos. 2 and 3 filed a Revision Application in the Sessions Court at Jalgaon, challenging the order of issuance of process passed by the learned JMFC. By way of impugned order, the learned Sessions Judge set aside the order of

issuance of process. Therefore, the original complainant-petitioner approached this Court.

9. Mr. Patil, the learned Advocate for the petitioner, vehemently argued the petition. He submits that the offence was clearly made out. The learned Magistrate, after satisfying himself and recording verification, issued process. The learned Sessions Judge committed a mistake by quashing the order of issuance of process. He prays for allowing the writ petition.

10. Mr. Dhaware, the learned APP prays for passing proper order.

11. The learned Sessions Judge, while deciding the revision application, considered that the complainant was an authorized distributor. The agreement is executed between the parties. Clause No.26 of the said agreement is about the arbitration. In another agreement in clause No.6, the complainant had agreed to provide five cheques as security to the accused. The learned Sessions Judge observed that the dispute is of a purely civil nature arising out of contractual obligation. The complaint is filed only on receipt of summons under

Section 138 of the N. I. Act. There is a presumption in law that the holder of a cheque is a holder in due course. It was held that no ingredients of Sections 409, 465 and 471 of IPC are attracted, observing that this is merely an attempt to convert a civil dispute into a criminal case.

12. This Court has gone through the judgment and submissions. There is no dispute about the fact that the complainant was a distributor. By way of an agreement, it was agreed that the complainant would give blank cheques towards security. Though it is stated that the said cheques were not to be presented, it needs to be seen that ultimately, cheques are given to be used in case there is any breach of conditions. The very averments of the complainant indicate that he had closed the account of one bank and opened an account in another bank. On that, he again gave cheques of the new bank. This clearly shows that the cheques were given towards future liability, as there is admittedly a business transaction between them. The second aspect is that the complainant filed present complaint only on receipt of the notice in 138 case. Taking

the case of the complainant as it is, it is clearly a defence to be taken in 138 case. It is open for the complainant to raise all the defences.

13. Considering above, this Court finds that no case is made out calling for interference with the impugned order. Hence, the following order:

ORDER

Writ petition stands dismissed and disposed off.

[KISHORE C. SANT, J.]