



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

7 CRIMINAL APPLICATION NO. 4793 OF 2024

**ANITA RAMDAS RATHOD @ ANITA ISWAR PAWAR
VERSUS
DHANANJAY MOHAN RATHOD**

....
Mr. Yogesh Arun Jadhav, Advocate for the Applicant

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 02.01.2025

PER COURT :-

1. Heard the learned counsel for the Applicant at length.
2. By the present Application under Section 482 of the Code of Criminal Procedure, the applicant/accused prayed for quashment of the proceeding bearing SCC No.556 of 2024, for the offence punishable under Section 138 of the Negotiable Instruments Act, which is pending on the file of the learned J.M.F.C., Pachora, District Jalgaon.
3. The learned counsel for the Applicant canvassed in vehemence that the non-applicant has filed Criminal proceeding

bearing SCC No.556 of 2024, for the offence punishable under Section 138 of the Negotiable Instruments Act. However, the cheque in question has not been dishonored due to insufficient fund as contemplated under Section 138 of the Negotiable Instruments Act. Therefore, no offence has been made out. Therefore, continuation of proceeding against the present appellant is abuse of process of law.

4. The learned counsel for the Applicant further canvassed that the complainant has not stated in complaint on what date the notice has been issued and on what date notice has been served upon the present Applicant / accused. The complainant failed to explain the same, properly. Therefore, the criminal proceeding for the offence under Section 138 of the Negotiable Instruments Act is amount to abuse of process of law, hence, prayed for quashment of the proceeding.

5. Needless to say that the present Applicant has not denied about issuance of cheque in question from her account. The present Applicant has also not denied her signature on the instrument in question. Needless to say that the non-applicant / complainant specifically stated in her complaint that due to dispute in respect of

sale of the land, the cheques were issued, however, both the cheques are dishonored on 25.05.2024 on the ground of 'fresh KYC is required'. Thereafter, on 03.07.2024, the mandatory notice under Section 138 of the Negotiable Instruments Act was issued, however, the applicant/accused refused to accept the notice, therefore, notice was returned unserved.

6. To constitute an offence punishable under Section 138 of the Negotiable Instruments Act, it is necessary to made averments that the cheques are issued to discharge the legal liabilities and it has been unpaid due to insufficient funds or exceed the arrangement.

7. In the case in hand, the instrument has been dishonored on the ground of fresh KYC is required. Therefore, the grounds set out in the present Application can be considered after full fledged trial and it cannot be considered at the initial stage. Hence, I do not find any substantial ground in the present case. Hence, it is rejected.

[Y. G. KHOBRADE, J.]

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