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50criwp2056.24

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

50 CRIMINAL WRIT PETITION NO. 2056 OF 2024

SUNIL MARUTI MHASKE

....Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

.....Respondents

Mr. N. B. Narwade, Advocate for the petitioner

Mr. Anand D. Lipne, Advocate for the respondent No. 2

Mr. Chaitali Choudhari-Kutti, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 01st AUGUST, 2025

P. C.

1. Heard the parties for some time.
2. In the present petition a challenge is to an order dated 04-04-2024 passed by the learned JMFC, Shevgaon below Exh.16 in SCC NO. 209/2020 directing the petitioner, accused in 138 case to deposit 20% of the cheque amount within sixty days.
3. The respondent-complainant filed a case under

Section 138 of the Negotiable Instruments Act bearing SCC No. 209/2020. In the said proceeding she filed an application Exh.16 seeking direction to the petitioner to deposit the 20% of the cheque amount, in view of Section 143 of the N. I. Act.

4. Mr. Narwade, learned advocate vehemently argued that the learned trial court failed to appreciate that there was no liability on the petitioner to pay any amount of the cheque. In the complaint the allegation is that the cheque was handed over towards transaction of sale of land. He submits that in the sale deed there is clear mention that entire amount of the sale consideration is received by the complainant. He submits that having specific mention of receipt of the amount, there is no question of issuing any cheque for discharge of any liability. The cheque signed by the petitioner is misused by the complainant and said cheque is presented for encashment. The learned court, thus failed to appreciate this very important facts and has passed the order.

5. The learned advocate for the respondent opposed the petition. He submits that section 143-A is specifically enacted to provide some relief to the complainant as in many of cases the trial take long period.

6. This court has gone through the order. The learned court has observed that in spite of several chances, the accused is not appearing in the court. The cheque is not disputed also the signature is also not disputed. The court, thus passed the order. While passing the order under Section 143-A of the N. I. Act what needs to be seen is only prima facie case. At this stage, the court is not expected to go into details of enquiry to ascertain the prima facie existence of the liability. The court has only to see that as to why the order is passed. In the present case the court observed that accused is continuously remaining absent in the matter. It is therefore, concluded that the accused is prolonging the matter and in that view direction was issued to deposit 20% of the cheque amount. This court does not find any illegality or perversity in the order. As the trial is pending since

2020, it would be only desirable to request the trial court to decide the matter as early as possible. Hence, the following order:

ORDER

- a] The criminal writ petition stands dismissed.
- b] The learned JMFC, Shevgaon is requested to decide the matter as early as possible and preferably within a six months from today.
- c] Needless to say that if the accused is acquitted, he shall be entitled to receive money back as provided under law.

[KISHORE C. SANT, J.]