

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 572 OF 2025

Dilip Waman Mhatre
Vs.

...Applicant

Shri. Sopanrav Dadu Yevale
And Anr.

...Respondents

Mr. Jitendra H. Oak	Advocate for the Applicant
Ms. G. S. Rao	APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 06th AUGUST 2025

P. C. :-

1. Heard learned Advocate for the Applicant.
2. Today, the matter is placed for admission. The Court of the Judicial Magistrate, Thane has issued process against the present Applicant for an offence punishable under Section 138 of the Negotiable Instruments Act. A copy of the complaint is on page no. 30. The details of the cheques are given on page no. 33. In all, there are six cheques. All cheques were dishonoured because there were instructions given by the accused to his banker, thereby stopping the payment (Para no. 10). When statutory notice was issued, it was

returned back with a remark 'refused'. As the accused has failed to make payment within the statutory period, a complaint was filed. A copy of roznama dated 09.07.2024 is annexed. It says about issuance of the process. The contention is raised that there is no detailed order of issuance of process. Such order is normally passed on the complaint. This complaint does not bear such an order. Petitioner ought to have inspected trial court record.

3. There is a settlement agreement executed on 22.09.2017 in between three parties. The present Applicant is the confirming party, who is described as Developer. Whereas the Respondent No. 2-Complainant No. 2-Shrikant is described as the Purchaser. Whereas one Atul is described as owner. There is reference of issuance of six cheques by the present accused in favour of the same Shrikant Katke.

4. The contention is even though the Complainant-Shrikant is not the owner, some misrepresentation was made and settlement agreement got executed. My attention is invited to the property card at page no. 28, wherein the land is shown in the name of the Government (Forest department).

5. The reliance is placed on the observations in case of Rekha

Sharad Ushir Vs Saptashrunji Mahila Nagari Sahkari Patsansta Ltd

passed by the Hon'ble Supreme Court in Criminal Appeal No. 724 of 2025, dated 26.03.2025. The contention is there is an abuse of process of the Court because the Complainant has deposited the cheques belatedly, in spite of the stop payment instructions (page 29).

6. I have read the observations in Rekha Ushir(supra). It is observed “*recording the Complainant’s statement on oath under Section 200 of the Criminal Procedure Code is not an empty formality. The object of recording the Complainant’s statement and witnesses, if any, is to ascertain the truth*” (para no. 10). That is also the legislative intent under Section 138 of the Negotiable Instruments Act. In para no. 11, the Hon'ble Supreme Court has dealt with grievance about suppression of the material fact, “*the fact which are suppressed must be material and relevant to the controversy, which may have a bearing on the decision making*”.

7. I am not inclined to grant benefit of this observation to the Applicant. It is for the reason that the Applicant does not come with the case that he has informed to the Complainant not to present the cheque, in fact the instructions were given to the banker. So, the

Complainant may not be aware of these instructions. It cannot be considered as concealment from the Court at the time of the issuance of the process.

8. The Applicant appears to be having some dispute about representation made at the time executing the MOU. At the time of the issuance of the process, the learned Magistrate has only to satisfy himself that cheques are issued, it is for discharge of the liability, they were deposited in time with the bank, dishonoured for the reasons mentioned in Section 138, statutory notice is issued and there is failure to make payment. These findings are there. The order of the issuance of the process is justified.

9. The learned Magistrate is not expected to deal with wrong promises given at the time of the settlement agreement. Even if this is disputed issue, it cannot be gone into such application. So I am not inclined to entertain the application, on such ground, the power under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 cannot be exercised. The Applicant is at liberty to raise all these grounds before the trial Court at the appropriate stage. So application is dismissed.

10. These are my *prima-facie* observations. Trial Court is at liberty to decide the issues independently.

[S. M. MODAK, J.]