



Judgment

58-Cr.WP-875-2023

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO.875 OF 2023

...

Amankumar S/o. Suryakishor Sharma,
Aged about- 27 years, Occupation-Service,
R/o. Barka Ganw, East Champaran,
Bihar-845 428.

... **PETITIONER**

- - V E R S U S - -

Santosh S/o Vasantrao Deshmukh,
Aged about- 37 Years, Occupation- Professor,
R/o- Mauli Niwas, SBI Colony, Sahakar Nagar,
Gorakshan Rd, Akola, Tah. & Dist. Akola.

... **RESPONDENT**

Mr. A.H. Mishra, Advocate for the Petitioner.

Mr. N.A. Parwani, Advocate for the Respondent.

CORAM : M.M. NERLIKAR, J.

DATE : SEPTEMBER 16, 2025.

ORAL JUDGMENT :

Heard.

2. Issue Rule, returnable forthwith. With consent of learned counsel for the parties, the petition is taken up for final disposal.

3. The present petition under Articles 226 and 227 of the Constitution of India challenges the order dated 16/04/2022 passed by Judicial Magistrate, First Class, Court No.8, Akola, and order dated 31/07/2023 passed by Additional Sessions Judge, Akola, in Criminal Revision Petition No.186/2022.

4. Brief facts are that the petitioner was employed with the respondent as an Assistant Lecturer in the coaching class run by the respondent and accordingly petitioner and respondent entered into an employment agreement dated

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01/01/2021 along with certain terms and conditions. After six months, the petitioner submitted his resignation, which was accepted by the respondent on 30/07/2021. The petitioner after 2.5 months from the date of resignation received a notice dated 17/09/2021 from the advocate of the respondent claiming an outstanding amount of Rs.3,20,000/- against the petitioner on account of advances taken from the respondent from time to time during the course of his employment. The petitioner through his advocate replied to the said notice thereby denying the claim. Thereafter, the respondent filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, read with Section 420 of the Indian Penal Code, 1860, before the Court of Learned Judicial Magistrate, Akola, and it was registered as Summary Case No.6527/2021. Accordingly, the Learned Chief Judicial Magistrate, Akola, was pleased to issue process against the petitioner. It appears that the petitioner challenged the order dated 16/04/2022 of issue process by filing Criminal Revision Application No.186/2022

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before the Learned Sessions Judge, Akola, on the ground that the order is passed without application of mind, as there is no existing legal enforceable debt or other liability to be paid by the present petitioner. The learned Revisional Court after hearing the parties, dismissed the petition by its order dated 31/07/2023, and therefore, the present petition.

5. I have heard the learned counsel for the petitioner and the learned counsel for the respondent. The learned counsel for the petitioner vehemently submits that both the Courts below have failed to take into consideration the relevant documents on record. He has specifically relied on agreement dated 01/01/2021 and submitted that Annexure-A which is part and parcel of the agreement was not considered by both the Courts, wherein, it is specifically mentioned that “All Relevant documents + ONE blank Signed CHEQUE + ONE MONTH salary will be deposited for security purpose. The Cheque and Salary will be released at the time of termination

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of service in the institute. An increment of 10-15% (based on performance and feedback) will be raised in each session.” He submits that the black cheque which is mentioned in the said Annexure-A was misused by the respondent, and therefore, Court ought to have gone through the said Annexure-A. He further submits that the respondent has suppressed the material fact, as there was an agreement of employment between the parties, and the blank cheque was issued by way of KYC document during the course of employment, which has been misused by the respondent/complainant, and therefore, there is no material before the Learned Judicial Magistrate, First Class, Akola, to issue process against the present petitioner.

6. On the other hand, learned counsel for the respondent submits that after going through the entire record, the learned Magistrate has applied his mind and after following due process of law, process was issued against the present

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petitioner. He further submits that petitioner obtained advances from the respondent to the tune of Rs.3,20,000/- excluding salary, however, the petitioner left the services of the respondent in breach of the agreement. Further he submits that an amount of Rs.3,20,000/- was outstanding against the petitioner and for that purpose petitioner has issued cheque bearing No.189021 of Axis Bank, Washim dated 20/08/2021. Accordingly, the respondent has presented the said cheque, however, it was returned back along with the remark that “Payment stopped by drawer”, and therefore, the respondent issued notice to the petitioner on 17/09/2021. As the petitioner denied the claim of the respondent, therefore, he was constrained to file the complaint under Section 138 of the Negotiable Instruments Act read with Section 420 of the Indian Penal Code. He further submits that both the Courts below have rightly passed the order.

7. Upon careful perusal of the documents and both the

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impugned orders, it appears that the order of issue of process passed by learned Judicial Magistrate First Class, Court No.8, Akola, is passed after following the procedure laid down under Section 138 of the Negotiable Instruments Act. The order depicts that the learned Magistrate perused the contents of the complaint and documents accompanying it, so also, verification of complaint. Not only that, as the accused is residing outside the jurisdiction of the Court, an enquiry was conducted as per Section 202 of the Cr.P.C. and *prima facie* it was found that the offence is disclosed, and therefore, process was issued against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act.

8. It would be necessary to consider the parameters for issuance of process to be followed by the Magistrate. From the catena of judgments, the parameters are settled those are, there should be a *prima facie* case, and sufficient grounds for proceedings so also there should be application of mind,

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however, no detail reasoning is required. Therefore, considering these parameters, whether the Magistrate is justified in issuing the process or not, is the moot question. It seems from the complaint filed by the respondent that an amount of Rs.3,20,000/- was outstanding against the petitioner and for that purpose the petitioner has issued Cheque bearing No.189021 of Axis Bank and when the said cheque was presented, it was returned back with remark that “Payment stopped by drawer”. Accordingly, the notice was issued on 17/09/2021, which was received by the petitioner on 24/09/2021. The said notice was replied by the petitioner, however, as the petitioner failed to return the cheque amount to the complainant within 15 days from the date of receipt of the notice, a complaint came to be filed. Therefore, the ingredients of Section 138 are *prima facie* satisfied. As was argued by the learned counsel for the petitioner that the clause in the Annexure-A of the agreement ought to have been considered by the Learned Judicial Magistrate, First Class,

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Akola, before issuing the process is nothing but a defense which was to be taken at the time of trial. As can be seen from the observations of Revisional Court in Para 9 of the impugned judgment and order dated 31/07/2023 that *“petitioner has raised defence of misuse of cheque given by him to the non-applicant with submissions that it was the blank undated and signed documents. As such, it is specific defence which is required to be considered on merits by giving opportunity to both parties during the stage of trial and evidence whereas it would be primarily presumption under Section 118 as well as Section 139 of the NI Act regarding drawing of cheque by the petitioner and for legal liability towards the complaint. The details of transaction between the parties is always the subject matter of the trial and it cannot be ascertained at the stage of issuance of process.”*

9. Therefore, while issuing the process, it is necessary to see that, there is *prima facie* case and sufficient ground to

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proceed. There should also be application of mind by the Court. Upon perusal of both the orders and documentary evidence, I am satisfied that both the Courts below have taken into consideration the above settled parameters and have applied their minds to the facts of the present case. Therefore, the arguments advanced by the learned counsel for the petitioner that clause in respect of one blank signed cheque ought to have been considered by the Courts below, is nothing but a defence which was to be agitated at the time of trial, and therefore, no case is made out for interference in both the impugned orders. Hence, the petition is **dismissed**. Rule stands discharged.

[**M. M. NERLIKAR, J**]