



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1469 OF 2023

Srinivas Naudpalli

.... Applicant

versus

State of Maharashtra & Anr.

.... Respondents

.....

- Mr. Premlal Krishnan a/w Preston Dias a/w Nadeem Shama a/w Prashant Bothre, Advocate for Applicant.
- Ms. Sangita D. Shinde, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 13th DECEMBER, 2023

PC. :

1. The Petitioner has challenged the order dated 19/10/2020 passed by the Metropolitan Magistrate, 14th Court, Girgaon, Mumbai, in C.C. No.68/SS/2020 issuing process against him for commission of offence punishable u/s 138 of the Negotiable Instruments Act.

2. Heard Mr. Premlal Krishnan, learned counsel for the Applicant and Ms. Sangita D. Shinde, learned APP for the State.

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3. The Petitioner is the only accused in the said case. The complaint is filed by the Respondent No.2. It is his case that he advanced a business loan of Rs.30,00,000/- to the Petitioner through RTGS in the year 2019. By way of security, the Petitioner had pledged shares of his company with the complainant. An agreement regarding that was executed on 28/03/2019. It is the complainant's case that, towards refund of the loan amount, the Petitioner issued a cheque dated 02/11/2019 for Rs.30,00,000/- drawn on HDFC, Hyderabad Branch, with the covering letter dated 14/06/2019. In the meantime, the value of the shares given as security, started falling down and therefore the complainant sold the Petitioner's shares and realised Rs.17,42,730/- out of the principal loan amount of Rs.30,00,000/-. According to complainant, the balance was Rs.12,57,270/- out of the said principal amount and the balance interest was Rs.97,350/-. The complainant deposited the cheque issued by the Applicant on 02/11/2019. It was dishonoured and then the complaint was filed.

4. Learned counsel for the Applicant submitted that the complaint itself shows that the balance amount which was due and payable to the complainant according to the complainant himself was less than half of the amount of Rs.30,00,000/-. This substantial payment was already made and the amount of Rs.30,00,000/- mentioned in the cheque was not due and payable and therefore the proceeding u/s 138 of the Negotiable Instruments Act was not maintainable. The complainant had not made any endorsement regarding the part payment on the cheque itself.

5. Learned counsel for the Applicant relied on the judgment of the Hon'ble Supreme Court in the case of ***Dhashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel & Ors. decided on 11/10/2022 in Criminal Appeal No.1497 of 2022.*** In particular he relied on the observations in paragraph No.29 of the said judgment, which is reads thus :

“20. *Under Section 56 read with Section 15 of the Act, an endorsement may be made by recording the part-payment of the debt in the cheque or in a note appended to the cheque. When such an endorsement is made, the instrument could still be used to negotiate the balance amount. If the endorsed cheque when presented for encashment of the balance amount is dishonoured, then the drawee can take recourse to the provisions of Section 138. Thus, when a part-payment of the debt is made after the cheque was drawn but before the cheque is encashed, such payment must be endorsed on the cheque Under Section 56 of the Act. The cheque cannot be presented for encashment without recording the part payment. If the unendorsed cheque is dishonoured on presentation, the offence Under Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment.”*

6. Considering these submissions, it is necessary to hear the other side. Learned counsel for the Applicant has made out a case for grant of ad-interim relief.

7. Hence, the following order :

ORDER

- (i) Issue notice to the Respondent No.2 returnable on 14/02/2024.
- (ii) Till the next date, there shall be ad-interim relief in terms of prayer clause (d).
- (iii) Stand over to 14/02/2024.

(SARANG V. KOTWAL, J.)