

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

CRIMINAL REVISION APPLICATION NO. 394 OF 2015

Mrs. Monica Sunit Ujjain	Applicant
Versus	
1. Sanchu M. Menon	
2. Sushil Yeshwant Raut	
3. The State of Maharashtra	Respondents

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Mr. Suresh Shetye with Ms. Khushboo Pathak i/by Mr. Prem Kumar Pandey, Advocate for the Applicant.

Mr. Vinod D. Gangwal, Advocate for respondent Nos. 1 and 2.

Mr. S. R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 2nd AUGUST, 2022

PC :

1. The applicant is aggrieved by order dated 26.06.2015 passed by Additional Sessions & District Judge-3, Thane in Criminal Revision Application No.134 of 2015.

2. The applicant is the original complainant in S.C.C. No.7963 of 2015 pending before the Court of 4th Joint Judicial Magistrate, First Class, Vashi at CBD Belapur, Navi Mumbai. The complaint was filed alleging offence punishable under Section 138 of Negotiable Instruments Act. The learned Magistrate issued process. The respondent

No.1 and 2 challenged order of process by preferring revision application before the Sessions Court. The learned Sessions Judge vide order dated 26.06.2015 allowed the revision application and set aside the order issuing process dated 09.04.2015 passed by learned JMFC, Vashi, Navi Mumbai.

3. The case of the complainant is that the accused No.1 is partnership firm and accused No.2 and 3 are partners of accused No.1. In February 2014, accused No.2 and 3 approached complainant for financial help and sought friendly loan of Rs. 12,00,000/-. The complainant transferred Rs.7,50,000/- to accused by RTGS on 22.02.2014 and sum of Rs.4,50,000/- was paid in cash to accused on 22.02.2014. The accused executed MOU admitting receipt of Rs.12,00,000/- and undertook to repay the loan on or before 30.08.2014. The accused issued five cheques bearing Nos. 068172, 068173, 068166, 068170 and 068168 in favour of complainant. The complainant presented the cheques which were dishonoured for the reason "Alteration". The complainant suspected that the accused have deliberately made mistake while writing name of complainant on the cheque. The accused issued

fresh cheque dated 11.03.2015 for Rs.11,50,000/-. The accused issued notice dated 02.03.2015 by which the accused admitted the loan transaction and liabilities of Rs.5,50,000/-. The accused however, made false claim in the notice stating that cheques were issued by way of security. Cheque were presented by the complainant which was returned with remark "Payment stopped by the drawer". The demand notice dated 17.03.2015 was sent to the accused. The complaint was filed before the Court of 4th Joint Judicial Magistrate First Class, Vashi at CBD Belapur, Navi Mumbai.

4. Learned Magistrate issued process for offence under Section 138 of Negotiable Instruments Act vide order dated 09.02.2015.

5. The applicant challenged the order of process before the Sessions Court by preferring revision application which has been allowed by the Sessions Court hence, applicant/complainant has preferred this revision application.

6. Learned advocate for the applicant submitted that the impugned order passed by learned Sessions Judge is contrary to law. Prima facie, case was made out against the

accused and the learned Magistrate after recording verification statement and considering the document on record issued process against the accused. Cheques were dishonoured. Demand notice was sent to the accused. All procedural safeguards were complied. Order of process could not be set aside in Revisional Jurisdiction. Learned Sessions Judge has considered defence of the accused. While deciding the revision application, the learned Sessions Judge failed to consider the presumption under Section 139 of Negotiable Instruments Act which has required to be rebutted during trial. Learned Sessions Judge has committed an error in observing that the MOU suggested payment of interest by the accused. The respondent No.1 and 2 has replaced the earlier cheques which shows the admission of liabilities. The learned Sessions Judge has committed an error in holding that the cheques were given by way of security and thus out of purview of Negotiable Instruments Act the accused had admitted the execution of cheques giving rise to statutory presumption under Section 118 and 139 of Negotiable Instrument Act. The order passed by learned Sessions Judge is required to be set aside. opportunity is required to be given to the complainant to prove its case by adducing

evidence. The learned Sessions Judge however, set aside the order of process on erroneous finding.

7. Learned advocate for the applicant has relied upon following decisions:-

- (a) Sripati Singh (Since Deceased) Through His Son Gaurav Singh Vs. State of Jharkhand and Another¹.
- (b) Pulsive Technologies Private Limited Vs. State of Gujarat and Others².
- (c) Mundalik Jewellers, Aurangabad and another Vs. Bhilaji s/o Ganpat Patil³.
- (d) Ganesh Madhavrao Hawaldar Vs. Mithalal Keshalal Dave⁴.
- (e) Basalingappa Vs. Mudibasappa⁵.
- (f) Madhukar V. Dessai Vs. Shaikh Abdul Riyaz⁶.
- (g) K. sitaram And Another Vs. CFL Capital Financial Service Limited and Another⁷.
- (h) Kashinath Balu Gaonkar Vs. Sunita Krishnajirao Dessai and Another⁸.
- (i) Rangappa Vs. Sri Mohan⁹.

8. Learned advocate for respondent No.1 and 2 submitted that there is no illegality in the impugned order.

Continuation of proceedings against the respondent would

1 2021 SCC OnLine SC 1002
2 (2014) 13 SCC 18
3 2010 SCC OnLine Bom 1881
4 1998 SCC OnLine Bom 436
5 (2019) 5 SCC 418
6 2006 SCC OnLine Bom 1500
7 (2017) 5 SCC 725
8 2015 SCC OnLine Bom 390
9 (2010) 11 SCC 441

be abuse of process of law. The Sessions Judge was empowered to entertain the revision application and set aside the order issuing process. Learned Sessions Judge has rightly taken into consideration the undisputed document on record and set aside the order of process. It was rightly held that in cases of money lending business without the license, the proceedings was not maintainable in law. The Court has observed that the transaction was loan transaction without license post dated cheques were given for security of the loan. Money lending without licence is cognizable offence. The respondents had lodged complaints against the applicant. The order issuing process was passed mechanically. It would not be possible to enforce any agreement. The object of which is unlawful within meaning of section 23 of Contract Act.

9. Learned advocate for respondents has relied upon the following decisions :-

- (a) Girdhari Parmanand Motiani Vs. Vinayak Bhagwan Khavnekar and Ors.¹⁰.
- (b) Smt. Nanda W/o Dharam Nandanwar represented through PAO Dharam S/o Kisandas Nandanwar Vs. Nandkishor s/o Talakram Thaokar¹¹.

¹⁰ 2016 ALL MR(Cri) 1909

¹¹ MANU/MH/0069/2010

- (c) Anil S/o Baburao Kataria Vs. Purshottam S/o Prabhakar Kawane¹².
- (d) K. K. Sidharthan Vs. T. P. Praveena Chandran and Anr.¹³
- (e) Rajendra Kumar Sitaram Pande Vs. Uttam and Another.¹⁴

10. I have perused the order dated 26.06.2015 which is impugned in this proceedings. The learned Sessions Judge while allowing the revision application preferred by respondent Nos. 1 and 2 has observed that the contract which is forbidden by law is void contract. In cases of money lending business without license, the provisions under Section 138 of Negotiable Instruments Act are not attracted. According to the complainant huge amount of Rs. 4,50,000/- was parted to the accused. There was a Memorandum Of Understanding (for short "MOU") dated 22.02.2014 between M/s. Monika Sumit Ujjain as the lender and M/s. Saga Infra as the borrowers. As per MOU it can be gathered that the transactions was without license. Post dated cheques were given by way of security. I have perused the MOU and the other documents on record considering the factual matrix of this case I do not find any

12 2010 Cri.LJ 1217

13 1996 (4) Crimes 102 (SC)

14 AIR1999SC1028

reason to interfere with the impugned order, Hence I pass the following order:-

ORDER

(i) Criminal Revision Application stands rejected and disposed off.

(PRAKASH D. NAIK, J.)