

ORDER ON EXH.19 IN C.C. NO.1266/SS/2015

This is an application filed by accused for discharging him.

2. Complainant filed say (Exh.20) to this application on 05/02/2018. Perused application, say and record of the case. Heard Advocates for the parties.

3. Advocate for accused argued that the complainant was willing to sale her 37 gunte land for consideration of ₹36 lakhs. However, only 26 gunte land is transferred in the name of accused and yet 11 gunte land is to be transferred. Complainant has not kept her promise. Therefore, accused has stopped payment of consideration amount of ₹10 lakhs through his Bank. Complainant should transfer remaining land to accused and accused will pay the balance consideration amount. Complainant has cheated accused. Therefore, this complaint is not maintainable and accused be discharged.

4. On the other hand, Advocate for the complainant argued that the Court has passed order of issue process. Now, this application for discharge is not maintainable. The Court has no power to review its own order and go back. There is no provision for discharge of accused in summons case. He placed reliance on the judgment of the Hon'ble High Court of Madras, **G. Chandrasekaran Vs. C.R. Umapathy, Criminal Revision Case no.1475 of 2003, Judgment dated 27/09/2004.** In this judgment, it is held that section 245 of Code of Criminal

Procedure is not applicable to cases filed under section 138 of Negotiable Instruments Act and there is no provision providing for discharge of accused in summons case.

5. In this case, order of issue process is passed. Thereafter, accused appeared and this application for discharge is filed. It is apposite to mention that as per the judgment of the Hon'ble Supreme Court in *Subramaniam Sethuraman vs. State of Maharashtra & Anr*, 2004 Vol.106(4) Bom.L.R.775 (SC) and *Adalat Prasad Vs. Rooplal Jindal & Ors.*, 2004 Cri.L.J.4874, Court cannot review its own order. Discharging accused after order of issue process, amounts to reviewing order of issue process. There is no provision for discharge of accused in summons case. Therefore, now this court cannot consider merits of this application at all, as this court is not empowered to review its own order. Hence, in result, I pass following order.

ORDER

Application is rejected.

Date:10/10/2018.	Sd/- (Mahesh T. Patankar) Metropolitan Magistrate, 72nd Court,Vikhroli,Mumbai.
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