

MHOS130013222018



S.C.C. No. 291/2018
Namdeo/Mahadeo

ORDER BELOW EXH.17

Accused moved application under Section 245 of Code of Criminal Procedure for discharging him from the offence punishable under Section 138 of N.I.Act.

2. By way of this application, accused submit that, the complainant has filed present complaint under Section 138 of N.I.Act. Accused submitted that, it is the contention of complainant in complaint that, the cheque was dishonored for insufficiency of funds. The complainant also prayed in complaint that, accused may kindly be convicted and compensation may kindly be imposed upon accused. It is contended by accused that, there is no reason arise to hand over disputed cheque to complainant. The accused not know to the complainant. Therefore, he has not given any assurance regarding disputed cheque. The accused submitted that, the grounds of discharge from offence under Section 138 of N.I.Act are made out in his favour. The complainant has taken disadvantage of disputed cheque and filed present complaint against accused to harass him. It is contended by accused that, the disputed cheque already given by him to one Shri.Shendage Saheb on 25.11.2015. But, the complainant contended in complaint that,

disputed cheque given by accused on 23.07.2018. However, the Shendage Saheb has given acknowledgment of receiving cheque. On this ground, no question made out to hand over cheque to present complainant. The complainant issued notice to accused on that date accused came to know about the custody of disputed cheque. Then accused gave his reply to the demand notice of the complainant. The complainant has taken dis-advantage of presumption provided under the N.I.Act. The complainant is trying to harass the accused. The accused will suffer from the persecution in judicial proceeding if he is not discharge from the said offence. Considering the evidence produced on record accused may kindly be discharge on the principle of natural justice. The accused lastly prayed to imposed compensatory costs on complainant.

3. The complainant filed his say below same exhibit and strongly objected the application of accused. The complainant submit that the, application of accused is not tenable in the eyes of law because charge is framed. The accused has not produced any evidence on record. Therefore, at this stage, he is not entitled for discharge. Complainant lastly prayed to reject the application.

4. Learned advocate Shri.S.G.Deshpande for accused submitted that, accused has not committed any kind of offence. The accused is not knowing to the complainant. Therefore, no ground made out for giving cheque by accused to the complainant. The accused has given cheque to the one Mr.Shendage Saheb. The learned advocate for accused placed his reliance on **ratio in case of Suleman and others Vs. State of U.P. and others, decided on**

30 September 2013. In this case, Hon'ble Allahabad High Court observed that, Section 245 of Cr.P.C. is applicable while discharging the accused. The court at any stage discharged the accused as per the provisions given under Section 245 of Cr.P.C. Learned advocate for accused further argued that the, complainant filed this complaint to harass the accused. The accused replied to the demand notice of complaint. Learned advocate for accused lastly submitted that, application may kindly be allowed.

5. Learned advocate Shri.B.B.Munde for complainant argued that, the application itself is not tenable in the eyes of law. The particulars of offence are read over to the accused on 20.11.2019 which is at Exh.14. The accused moved this application for discharge. There is no stage of discharge in the summary cases. The learned advocate for complainant placed his reliance on **Ratilal Bhanji Mithani Vs. The State of Maharashtra, decided on 28 September 1978.** In this case Ho'nble Apex Court observed that, there is no such stage in the summons cases for discharge. There is difference between discharge and acquittal in different cases. Learned advocate for complainant lastly argued that, application itself not tenable and liable to be rejected.

6. I have given thoughtful consideration to the argument advanced by learned counsels for respective parties. It is seen from the record that, present complaint is filed for the offence punishable under Section 138 of N.I.Act against accused. On issuance of process accused appeared and applied for bail. Then particulars of offence are read over to accused at Exh.14 on

20.11.2019. Then this application moved by the accused for discharging him. The ratio discussed supra is settled position of criminal law and not applicable to the present case. In present case, the plea of accused is recorded and matter posed for the evidence of complainant. Admittedly, both party will get opportunity to lead their evidence respectively. The accused moved application for discharge is not tenable at this stage because the grounds adduced by the accused for discharging him are became part and parcel of evidence. On this ground, application deserves to be rejected. I proceed to pass the following order.

O R D E R

Application is rejected.

Date : 02.12.2021

Sd/-
(K.K.Khomane)
Judicial Magistrate, F.C., Bhoom

C E R T I F I C A T E

I affirm that, the contents of this P.D.F. file Judgment are same, word to word, as per the original Judgment.

Name of Stenographer	:-	M.K.Shinde
Court	:-	J.M.F.C., Bhoom, Dist. Osmanabad.
Date	:-	02.12.2021
Order signed by the Presiding officer on	:-	02.12.2021
Order uploaded on	:-	03.12.2021