

ORDER BELOW EXH.47 IN S.C.C. NO.187/2015

1] The accused has filed present application for discharge. It is the contention of accused that, after issuance of process he was appeared and furnished bail bonds. He contends that, the complainant has filed affidavit in-lieu-of examination-in-chief and submitted various documents alongwith the same. He contends that, no transaction took place between the complainant and accused as alleged in the complaint. He contends that, the complainant had filed complaint with police in which it was the contention of the complainant that, he had paid an amount of Rs.1,10,00,000/- to the accused. He contends that, on the contrary it is the contention of the complainant in present complaint that, he had paid an amount of Rs.80,00,000/- to the accused. He contends that, the complainant had made contradictory statements regarding the alleged transaction as mentioned in the complaint. He contends that, the complainant at one hand contends that he is a businessman and on the other hand the income tax record shows that he is serving in one Video Game Parlour. He contends that, the complainant did not have financial capacity to pay an amount of Rs.80,00,000/- to the accused. The accused further disputed his signature and handwriting over the disputed cheque. It is the specific contention of accused that, he has challenged the order of issuance of process by filing revision application in the Hon'ble District Court at Satara which is pending. On the above stated grounds the accused prayed for discharge.

2] The complainant filed say at Exh.49 and strongly contested the application. It is the contention of complainant that, the accused has already knocked the door of Hon'ble Sessions Court by challenging the order of issuance of process vide Criminal Revision Application No.27/16. The said revision application came to be dismissed vide order dated 18/04/2017. He contends that, against said order accused has gone to the Hon'ble High Court vide Writ Petition No.2655/17 which has also been dismissed on 29/11/2017. The complainant contends that, the present application is not maintainable in the eyes of law. He contends that, to rebut the statutory presumption as per Section 139 of the Negotiable Instruments Act, the accused needs to lead evidence. He, therefore prayed for rejection of the application.

3] Heard the learned Advocate for complainant and accused. Perused the complaint, the documents produced on record by both the parties.

4] The learned Advocate for complainant placed his reliance on the following case-laws :-

- 1] *Subramaniam Sethuraman V/s. State of Maharashtra & another, reported in Bom.C.R. (Cri.)2005 (1) 189.*
- 2] *Sanjeev Rai V/s. State of U.P. & another, reported in 2005(1) DCR 281.*
- 3] *G. Chandrasekaran V/s. C.R. Umapathy, reported in 2005 Cri.L.J. 1820.*

The ratio laid down in the above cited case-laws can be sum up as follows :-

'Once the plea of the accused is recorded under Section 252 of the Code of Criminal Procedure, the procedure contemplated under Chapter XX has to be followed which is take the trial to its logical conclusion. As observed in Adalat Prasad's case the only remedy available to an aggrieved accused to challenge in an interlocutory stage is the extraordinary remedy under Section 482 of the Code and not by way of an application to recall the summons or to seek discharge which is not contemplated in the trail of a summons-case. Offence under Section 138 of the Negotiable Instruments Act is a summons-case. The trial of the summons-case is controlled by Chapter XX of Cr.P.C. where there is no provision for the discharge. Application for discharge in a summons-case is not maintainable.'

5] The learned Advocate for accused placed his reliance on certain documents produced alongwith list Exh.58 in which it was the contention of the complainant that, he had paid an amount of Rs.1,10,00,000/- to the accused. The learned Advocate for accused drawn my attention to the contents of complaint Exh.1 in which it was the contention of complainant that, he had paid an amount of Rs.80,00,000/- to the accused. The learned Advocate for accused therefore argued that, the complainant has made contradictory statements and there is no supporting evidence to show that, any such transaction took place between the parties as

alleged in the complaint.

6] Perusal of record shows that, after perusal of contents of complaint and requisite documents i.e. the cheque in question, the cheque return memo, the demand notice and reply notice, my learned Predecessor issued process against the accused of the offence punishable under Section 138 of the Negotiable Instruments Act vide order below Exh.1 dated 24/11/2015. It is the specific contention of accused in present application that, he has challenged said order in the Hon'ble Sessions Court at Satara by preferring revision application which is pending. Perusal of record shows that, the order passed by the Hon'ble Additional Sessions Judge, Satara in Criminal Revision Application No.27/2016 is on record vide Exh.36 which shows that, said revision application came to be dismissed vide order dated 18/04/2017. The present application has been filed on date 12/01/2018 i.e. after laps of 8 months from the date of passing of order in revision application. These facts show that, the contention of the accused that the revision application is pending, is false. These facts further shows that, the accused has not come with clean hands and suppressed material facts.

7] The present case is filed for trial of offence punishable under Section 138 of the Negotiable Instruments Act which is a summons-case and controlled by Chapter XX of Cr.P.C. In Chapter XX of Cr.P.C. there is no provision for discharge. The record further

shows that, present application has been filed on the same grounds which were taken by the accused in revision application challenging the order of issuance of process. For the afore stated reasons, present application devoid of any merits, is liable to be rejected with costs. Hence, the following order is passed -

ORDER

1. Application Exh.47 is rejected with cost of Rs.300/- to the complainant to be deposited in the court on or before next date.
2. The case is pending since year 2015 and pending for cross-examination of the complainant since December 2016.
3. The accused is therefore, directed to proceed with cross-examination of the complainant without seeking further adjournments, failing which further order will be passed.

Date. 18/01/2019

(G. M. Sadhale)
Judicial Magistrate First Class,
Mahabaleshwar.