

ORDER BELOW EXH.32

(Passed on 02/11/2019)

[CNR No. MHWS0-7001693-2018]

1- This is an application filed by the accused for dismissal of complaint. It is submitted by the accused that the complainant has filed complaint and thereby prayed for the action under section 138 of the Negotiable Instruments Act.

2- The complaint does not invoke the action under the provisions of section 138 of the Negotiable Instruments Act, because the contentions in the complaint are in respect of the alleged dispute about ancestral property, therefore prior to invoking the action under the provisions of section 138 of the Negotiable Instruments Act the complainant first of all has to adjudicate upon the title and then after, after the confirmation of the title they can invoke for the action under section 138 of the Negotiable Instruments Act if any transaction or cheque has given by the accused. In the present case the accused has not issued any cheque in favour of complainant, therefore there is no reason to invoke any action under this Act. Therefore, the complaint is not tenable and may kindly be dismissed with cost, in the interest of justice.

3- The complainant filed her say vide Exh. 34 and strongly opposed the present application.

4- It is submitted by the complainant that prima facie the complaint does not invoke the action under the provisions of section 138 of the Negotiable Instruments Act because the contentions in the complaint are in respect of the alleged dispute about ancestral property.

It is submitted that, in the complaint there is no dispute regarding the ancestral property. It is categorically denied that, prior to invoking the action under the provisions of section 138 of the Negotiable Instruments Act, the complainant first of all has to adjudicate upon the title and thereafter, after the confirmation of the title they can invoke for the action under section 138 of the Negotiable Instruments Act, if any transaction or cheque has given by the accused.

5- It is submitted that, all these allegations are false, there is no dispute regarding the adjudication of the title of the complainant. It is submitted that the accused has issued a cheque in discharge of legal liability and therefore, all these allegations are false and denied. It is also specifically denied that the accused has not issued any cheque in favour of the complainant and therefore, there is no reason to invoke any action under this Act. It is submitted that, the accused has issued a cheque in favour of the complainant and ongoing through the documents placed on record, the Hon'ble Court has been pleased to issue process against the accused and as such there is a prima facie case to proceed against the accused. That, it is therefore, emphatically denied that the complaint is not tenable and is liable to be dismissed. It is submitted that the application filed by the accused is baseless and without any substance and deserves to be rejected and the same may kindly be rejected in the interest of justice.

6- Perused the application and say. Heard the learned advocate for the accused Shri. J. M. Khan and the learned advocate for the complainant Shri. D. K. Pinjarkar at sufficient length. Perusal of the record shows that this court had recorded particulars of the offence vide

Exh. 28 on 02.04.2019. It is submission of the accused that prima facie the complaint does not invoke the action under the provisions of section 138 of the Negotiable Instruments Act because the contentions in the complaint are in respect of alleged dispute about ancestral property. Therefore, prior to invoking action against the accused the complainant first of all has to adjudicate upon the title. Thereafter, after confirmation of title the complainant can invoke action against the accused. Moreover, the accused has not issued any cheque in favour of the complainant.

7- However, it is important to note here that whether the said transaction was in respect of ancestral property or not can not be decided at this stage. Further, the present matter is in respect of section 138 of the Negotiable Instruments Act and the complainant has to prove that the said cheque was issued for discharge of any debt or other liability. Hence, prima facie it can not be said that complainant has to prove his title over the said ancestral property. Further, the present matter is not filed for declaration of ownership. Hence, considering the same it can not be said that the complainant has to prove title over the ancestral property as alleged. Moreover, whether the accused has issued cheque in question to the complainant or not can be decided only after evidence of both parties. Hence, I found no force in the contentions of the accused. Therefore, I pass the following order.

ORDER

Application (Exh.32) is hereby rejected.

Sd/-

(R. M. Shaikh)

Judicial Magistrate, First Class,
Karanja (Lad), Dist. Washim.

Date-02/11/2019.
Karanja Lad.

CERTIFICATE

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

Name of Steno. :- N.L. Jamnik (Stenographer-3)
Court Name :- Civil Judge (Jr.Dn.) and
J.M.F.C., Karanja. Dist. Washim.
Date :- 02/11/2019
Order signed by the :- 02/11/2019
presiding officer on
Order uploaded on :- 04/11/2019

