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VAISHALI
ANIL
TIKAMIN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 869 OF 2018

Brijeshkumar Jivram Mishra

...Applicant

Vs.

Mohammed Zzimirulla Khan and Anr.

...Respondents

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Mr Pankaj Jain a/w. Mr. Pradeep Purohit i/by P.D. Jain & Co., Advocate
for Applicant.

Mr. Pradyumna D. Sharma a/w. Nitshi Jain, Advocate for Respondent
No.1.

Mr.S.R. Agarkar, APP for Respondent-State.

CORAM : SHIVKUMAR DIGE, J.

DATE : 30th MARCH, 2026.**P.C. :**

1. Heard learned counsel for the Applicant and learned
counsel for Respondent No.1.

2. By this application, Applicant is seeking quashing the
Criminal complaint No. 1089/SS/2018 pending before Metropolitan
Magistrate, 20th Court, Mazgaon, Mumbai for the offence under
Section 138 of the Negotiable Instruments Act (for short 'NI Act').

3. It is contention of learned counsel for the Applicant that a
registered Leave and License Agreement was executed between the
Applicant and Respondent No.1 for Flat No. 202 in A Wing Infinity



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Tower No.2, Mazgaon, Mumbai. The Applicant had given said flat to Respondent No.1 on rent basis for a license period of 11 months. After expiry of licence period Respondent No.1 failed to vacate the flat, the Applicant filed proceedings under the provisions of Maharashtra Rent Control Act against Respondent No.1. The Competent Authority allowed the application filed by the Applicant and directed Respondent No.1 to give possession of the said flat to the Applicant, but Respondent No.1 did not give possession of the said flat and continued to remain in possession. The money claim of the applicant against Respondent No.1 was exceeding Rs. 50 lacs. Learned counsel further submitted that the Applicant and Respondent No.1 entered into Memorandum of Agreement dated 06/02/2013 and 08/02/2013 concerning the vessel 'Victor V'. The MOA expressly records the vessel was sold on 'AS IS WHERE IS BASIS' Learned counsel further submitted that thereafter, there were consent terms executed between them. The consent terms executed between Applicant and Respondent No.1 and out of those consent terms, the disputed cheque was issued by Applicant in favour of Respondent No.1. In the said consent terms dated 27/01/2016, it



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was specifically mentioned that vacating of flat by Respondent No.1 and adjustment of competing claim arising from the property and maritime transactions. The cheque was issued duly after settlement negotiations and was a replacement for earlier cheque exchanged in same contents. As Respondent No.1 did not vacate the said flat, the Applicant issued stop payment instructions to the bank. It was not an act of dishonesty, but as a preemptive legal measure as Respondent No.1 breached the terms mentioned in the consent terms, it cannot be said that Applicant was legally liable to pay the amount mentioned in the cheque. The transaction between the Applicant and Respondent No.1 discloses a civil dispute. But this fact is not considered by the learned Magistrate's Court and had passed issue process order, which is erroneous and requested to allow the application.

4 It is contention of learned counsel for Respondent No.1 that the Applicant has sold the said flat to third party on 07/01/2015 before the consent terms were executed. The third party mortgaged the said flat with the bank. The Applicant had issued the cheque for clearing the legal liability. The learned Magistrate's Court has passed



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well reasoned order and therefore, no interference is required. The facts raised by learned counsel for the Applicant can be considered at the time of trial and at a prima facie stage, complaint cannot be quashed as applicant is admitting about issuance of cheque and not disputing its issuance, and requested to reject the application. Learned counsel relied on following judgments:

(i) Lalit Kumar Sharma and Another vs State of Uttar Pradesh and Anr.¹;

(ii) Indus Airways Private Limited and Ors. vs. Magnum Aviation Private Limited and Anr.²

5. I have heard both learned counsel. Perused documents and impugned order produced on record. Admittedly, Respondent No.1 was residing in the flat of the Applicant and did not vacate the flat in spite of direction of the competent authority. The Applicant had sold the vessel to Respondent No.1. Respondent No.1 had paid the charges of the vessel to the concerned authority. The vessel is in possession of Respondent No.1. Out of their dispute, both parties entered into consent terms dated 27/01/2016 and one of the conditions of the consent terms was vacating the flat by Respondent

¹ (2008) 5 Supreme Court Cases 638

² (2014) 12 Supreme Court Cases 539



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No.1 and adjustment of competing claim arising from the property and maritime transactions and as per the consent terms, the cheque was issued to Respondent No.1. It is alleged that thereafter, Respondent No.1 did not vacate the said flat. Hence, the Applicant, by giving intimation to the bank, stopped the payment of the said cheque given to Respondent No.1. It is contention of learned counsel for the Applicant that dispute between applicant and respondent No.1 is of civil nature and there was no legal liability of the Applicant towards payment of Respondent No.1. Whereas it is contention of learned counsel for Respondent No.1 that the said flat was sold by the Applicant in the year 2015 i.e. before entering into the consent terms.

6. In my view, the consent terms dated 27/01/2016 were executed between the Applicant and Respondent No.1 and one of the conditions was vacating the flat. But, Respondent No.1 did not vacate the flat and hence, the Applicant stopped the payment of the cheque. It shows that there is no legal liability of the Applicant and the nature of dispute between the Applicant and Respondent No.1 is civil. The learned Magistrate has not considered these facts. I have



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gone through the cases laws cited by Respondent No.1. The facts of present case and cited case are different. Hence, not applicable and I pass following order:

ORDER

- (i) Application is allowed,
- (ii) The criminal complaint No. 1089/SS/2018 pending before Metropolitan Magistrate, 20th Court, Mazgaon, Mumbai is quashed and set aside.
- (iii) Application is disposed of in the aforesaid terms.

(SHIVKUMAR DIGE, J.)