
(1995) 08 BOM CK 0010

In the Bombay High Court

Case No : Criminal Writ Petition No. 1116 of 1993;

Suresh Banarsidas Agarwal

APPELLANT

Vs

Vijay Kumar B. Agarwal

RESPONDENT

Date of Decision : 25-08-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 204, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 34, 420

Citation : (1998) BomCR(Cri) 542

Hon'ble Judges : B.H. Bhairavia, J

Bench : Single Bench

Advocate : Ashok, M. Saraogi, for the Appellant; K.N. Bhatia, for the Respondent

Judgement

V.H. Bhairavia, J.—This petition is preferred under Articles 226 and 227 of the Constitution of India, invoking this Court's inherent jurisdiction u/s 482 of the Criminal Procedure Code, praying for quashing the process issued against the petitioner-Accused No. 2 in the complaint filed by the respondent-complainant, disclosing an offence punishable u/s 420 read with section 34. I.P.C. as also an offence punishable u/s 138 of the Negotiable Instruments Act.

2. Heard Mr. Ashok M. Saraogi, learned Counsel for the petitioner-Accused No, 2 and Mr. K.N. Bhatia, learned Counsel for respondent No. 1 complainant. It has been pointed out by the learned Counsel for the petitioner-Accused No. 2 that there is no specific allegation in the complaint against the petitioner-Accused No. 2 and the learned Magistrate has, without applying his mind, issued process against the petitioner-Accused No. 2. It reveals from the record that two cheques were purported to be issued by Accused No. 1 in favour of respondent No. 1 complainant for Rs. 2,00,000 each, in all Rs. 4,00,000, which were returned back to the complainant by his banker as there was no sufficient fund available. After issuing notice to the petitioner, he filed complaint alleging that both the accused persons have committed offences punishable u/s 420 read with section 34. I.R.C.

and u/s 136 of the Negotiable Instruments Act. There is not a single line in the body of the complaint involving the petitioner-Accused No. 2 and pointing out any specific role played by him in committing the offence punishable u/s 420, I.P.C. Admittedly, the cheques were issued by accused No. 1 and the petitioner-Accused No. 2 had neither signed over those cheques nor entered into any transaction with the complainant. In view of these facts, the complaint u/s 420 read with section 34, I.P.C. and u/s 138 of the Negotiable Instruments Act is not maintainable against the petitioner-Accused No. 2 and no conviction can be recorded on the basis of this complaint. Therefore, the process issued against the petitioner-Accused No. 2 deserves to be quashed and set aside.

3. In the result, this petition is allowed. The order dated 23-11-1992 passed by the trial Court issuing process against the petitioner-accused No. 2 in the criminal case filed by respondent No. 1 complainant is quashed and set aside and the said case is dismissed so far as the petitioner accused No. 2 is concerned. So far as accused No. 1 is concerned, the Court may proceed against the said accused No. 1.

4. Petition allowed.