

Lawyer Takes Client To Court For Dishonour Of Cheque; Client Challenges Process Issued; Bombay HC Refuses To Interfere [Read Judgment]

BY: NITISH KASHYAP

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The Bombay High Court on Wednesday refused to interfere in proceedings filed under Section 138 of the Negotiable Instruments Act by Advocate Amar Mishra against his former clients Alka and Khandu Avhad.

Justice SS Shinde heard the criminal writ petition filed by Alka Avhad

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Case Background

The complainant, Advocate Mishra is respondent number 1 in the said petition. According to the complainant, accused husband and wife approached Mishra who is a partner in a solicitor firm called SRM Law Associates through one of his other clients.

Between Jun 2015 and April 2016, the complainant assisted both husband and wife in preparing replies and notice of motion, conference, co-ordinating with counsel, filing vakalatnama and appearing as a counsel in three separate cases for both husband and wife before the City Civil Court Mumbai.

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The complainant raised a professional bill for the legal work done by him. However, Alka told him that she and her husband were in severe financial stress and would not be able to pay his fees immediately. Thereafter, the complaint states that Khandu Avhad handed a post-dated cheque (dated March 15, 2016) of Rs.8,62,000 to the complainant.

Further when the said cheque was presented for encashment the same

upon them to pay the said amount within 15 days from the date of receipt of said notice. The said notice was received by the accused but they did not reply it and therefore a complaint for the offence punishable under Section 138 of the Negotiable Instruments Act was filed.

After examining the facts of the case, Metropolitan Magistrate found a prima facie case against the accused couple for dishonour of cheque and issued process against them.

Submissions

Dr.Samarth Karmarkar appeared on behalf of the petitioner accused and argued petitioner's husband Khandu Avhad had appointed the complainant as an advocate to act, appear and plead for him. Further, complainant took petitioner's husband in confidence and "made him issue a blank cheque."

Karmarkar argued that the complainant misused the blank cheque signed by petitioner's husband against him with wrongful intention and then filed a complaint against the petitioner and her husband. He submitted that Advocate Mishra filed the complaint with an oblique motive without disclosing true and correct facts. It has been done with

a deliberate mala-fide intention to put pressure and blackmail the

approximately 40 emails were exchanged between her client and the accused couple. The said petition is not maintainable since it is preferred against an order passed by the Magistrate issuing summons against the accused, as the petitioner did not avail the remedy before the revisional court and has directly approached the High Court, Advocate Sheetal argued.

She submitted that though the said summoning order was served upon the petitioner accused Alka, she chose not to appear before the magistrate, and it is only after a bailable warrant was issued, she appeared before the trial court and obtained the bail. Further, the petitioner was medically unfit, so her husband issued the cheque on her behalf to fulfill her legal obligation and therefore, there is a joint liability of the petitioner as well as her husband, Goad said.

She also relied upon the following judgments in support of her submissions-

Delhi High Court's judgment in **Rajesh Agarwal v/s. State and Anr** and in the case of **Ambica Plastopack Pvt. Ltd and anr. v/s. State and Anr**

 Judgment

Court noted-

"The contention of the Petitioner that Respondent No.1 with mala fide

Petitioner as co-accused, can be considered and decided only during trial after giving opportunity to the parties to lead evidence in that regard. It is an undisputed fact that the cheque issued by the husband of the Petitioner was dishonoured. Whether the said cheque was issued towards discharging the legal liability of both the accused or, according to Petitioner, Respondent No.1 used the blank cheque signed by her husband with wrongful intention is a matter of evidence, which will be adduced during the trial."

Rejecting the petition, Court said-

"In the light of aforesaid discussion and considering the allegations made in the complaint, the material placed on record, no case is made out to cause interference in the order of issuance of process."

[Click here to download the Judgment](#)



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.2595 OF 2019

Alka Khandu Avhad]	
Aged, Adult, Occ : Housewife]	
Res/at, 1302, Raheja Atlantis,] Petitioner
Ganpata Rao Kadam Marg,]](Org.Acc.No.2)
Lower Parel (W), Mumbai – 400 013]	

versus

1]	Amar Syamprasad Mishra]	
	Aged Adult, Occ : Advocate]	
	Res/at, C-11, Tilak Complex, Ekasar Road,]	
	Shanti Ashram, Borivali (West),]	
	Mumbai – 400103]	
	And]	
	Sai Mauli Apartment, Achole Cross Road,]	
	Nalasopara (E), Thane – 401209]	
]	
2]	The State of Maharashtra] Respondents.

Dr. Samarth S Karmarkar a/w Ms. Supriyanka G Maurya i/by Karmarkar & Associates for the Petitioner.
Ms. Sheetal Goad for Respondent No.1
Mr. A R Patil, APP, for the Respondent/State.

CORAM : S. S. SHINDE J.
Reserved on : 08th August 2019
Pronounced on : 21st August 2019.

JUDGMENT

1 Rule, with the consent of the learned counsel for the parties made

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