

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE PRANAY VERMA**

**MISC. CRIMINAL CASE No. 57573 of 2023**

**BETWEEN:-**

**PITAMBER MANGLANI S/O  
LATE SHRI TARACHAND  
MANGLANI, AGED ABOUT 66  
YEARS, OCCUPATION:  
BUSINESS R/O NEW SINDHI  
SOCIETY BUNGALOW NO. 3, D –  
CABIN, NEAR VALLABH PARK,  
SABARMATI, AHMEDABAD  
GUJRAT (GUJARAT)**

**.....PETITIONER**

***(BY SHRIRAVINDRA SINGH CHHABRA- SENIOR ADVOCATE WITH SHRI RAGHAV  
ROY SINGH- ADVOCATE )***

**AND**

**GYANESHWAR NARYANI S/O  
SHRI VENMOOL NARYANI,  
AGED ABOUT 42 YEARS,  
OCCUPATION: BUSINESS R/O 8  
MITRA NAGAR POLICE  
COLONY UJJAIN (MADHYA  
PRADESH)**

**.....RESPONDENT**

***(BY SHRI NITIN BHATI - ADVOCATE )***

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*Reserved on : 22.02.2024*

*Pronounced on : 18.03.2024*

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*This petition having been heard and reserved for orders, coming on for pronouncement this day, the court passed the following:*

### **ORDER**

This petition under Section 482 of the Code of Criminal Procedure has been preferred by the petitioner/accused being aggrieved by the order dated 08.11.2023 passed in case No.1384/2018 by the Judicial Magistrate First Class- Ujjain whereby an application under Section 91 of the Cr.P.C. filed by him has been rejected.

2. The facts in brief are that the respondent/complainant has filed a criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner/accused before the trial Court. He has submitted that he and the accused are relatives and are known to each other. In 2013 they were residing at Dubai. In October, 2013 accused was in need of money hence took Rs.2,76,00000/- from the complainant on loan saying he would return the same within six months. Subsequently the complainant came back to India from Dubai. When he demanded money from the accused he issued a cheque dated 23.07.2018 in a sum of Rs.10 Lakhs in his favour drawn on State Bank of India, Branch Sabarmati, Ahmedabad. When the complainant presented the cheque for encashment the same was returned dishonored with the endorsement that payment thereupon has been stopped. The complainant thereafter issued the statutory notice to the accused but despite receipt of the same the amount of the cheque has not been paid by him to the complainant. On such averment the complaint has been preferred by the complainant before the trial Court.

3. During the course of proceedings before the trial Court the complainant was examined as PW.1 in which he stated that presently he is carrying on the business of School Uniform which he has been doing for past

2-3 years. Prior to that he was living in Dubai where he was having readymade garments business as a proprietor from 2007 up to 2017. He admitted that he has not filed any document as regards his business from the year 1987 up to 2017 at Dubai. He admitted that he had a bank account in Rasalam Khema Bank. He does not remember the details of bank account but will inform the same when the details of the account are produced. He stated that up to 2007 his salary were 400 Dirham per month. He has further stated that he has not filed any document as regards his income from the year 2007 up to 2017 and is not aware of his income for that period. Though he stated that he has a bank statement of the bank account of his firm at Dubai which he can give but has not done so.

4. Thereafter the accused filed an application under Section 91 of the Cr.P.C. for directing the complainant to produced the account book of his firm “Wall Mark Trading”, income tax return, account statements and other related documents particularly when he has contended that he has given a huge sum of Rs.2,76,00,000/- to the accused. The application was contested by the complainant by filing his reply to the same and has been rejected by the trial Court by the impugned order by observing that the complaint is in respect of a cheque of Rs.10 Lakhs and the transaction of Rs.2,76,00,000/- between the parties does not have any bearing upon the matter. The documents which are desired by the accused are not relevant for the determination of the disputes in the present case.

5. Learned counsel for the accused has submitted that the complainant has contended to have advanced a huge sum of Rs.2,76,00,000/- to the accused towards repayment of which the cheque in question was allegedly issued by the accused to the complainant. Though in his cross examination the complainant has admitted that he has the documents as regards the bank

account at Dubai i.e. during the period when such advancement of amount was made by him to the accused, but he has not produced the same. The proof of financial capacity of the complainant to have advanced such an amount to the accused is very much a relevant factor and is a crucial piece of defence of the accused which cannot be denied to him. Though the cheque is of a sum of Rs.10 Lakhs but the genesis of the transaction is the advancement of a sum of Rs.2,76,00,000/- by complainant to the accused. It hence cannot be held that the said transaction has no correlation to the issuance of the cheque. Since the amount is huge it is highly improbable that it is not routed through the bank nor reference of said transaction would find place in the income tax returns of the complainant or in his account books. Therefore, the documents which may establish income of petitioner and which have material bearing on the controversy should be brought through application under Section 91 of the Cr.P.C. which has been erroneously rejected by the trial Court. Reliance has been placed by the learned counsel for the accused on the judgment of the Supreme Court *State of Orisa vs. Devendarnath Pathi*, 2005(1) SSC 568, *Helios & Matheson vs Rajeev Sawhney*, 2012(1) SSC 699, *John K Abraham vs Simon C Abraham & Anr.*, 2014(2) SCC 236 and of this Court in *Bharat Bhai Patel vs. Smt. Radha Agarwal*, 2014(1) MPWN 70, *Ashish vs. Vaibhav*, 2016 (3) MPWN 40, *Vikas Jain vs. Kalmesh Jain*, MCRC No.28336/2019 decided on 30.08.2019, *Fredi Joseph Hedri v. Ghanshyam Verma*, (2020) 1 MPLJ 77, *Shivendra Dhakre vs. Narendra Sharma*, MCRC 8274/2017 decided on 09.08.2017.

6. *Per contra* learned counsel for complainant has submitted that the dispute involved in the present case is as regards dishonor of the cheque in the sum of Rs.10 Lakhs issued by the accused to the complainant. The same

has no correlation with the alleged advancement of a sum of Rs.2,76,00,000/- by the complainant to the accused hence the trial Court has rightly held that for purpose of proving alleged advancement of the said sum by the complainant to the accused the documents as desired by him are not relevant. Moreover, the accused has himself been cross examined before the trial Court and all the deficiency as could be brought out in the case of the complainant have already been stated therein. There is hence no necessity for calling the documents as desired by the complainant in view of which the petition deserves to be dismissed.

7. I have considered the submissions of learned counsel for the parties and have perused the record.

8. From the pleadings of the parties and admission of the complainant it is apparent that he has categorically admitted that he had a bank account in Dubai in the name of his firm and can produce the same. He has also admitted that he has bank account statements which he can give. He has stated that he was carrying on the business at Dubai in the name of a firm hence it can be safely presumed that he was maintaining his account and ledger books in respect of his business. He has stated to have advanced a sum of Rs.2,76,00,000/- to the accused. This amount is a huge amount and in all probability in usual course of business would be reflected in the account books, bank account, income tax returns etc. of the complainant. The accused hence rightly moved the application under 91 of the Cr.P.C. so that the controversy can get clarity in respect of actual advancement. It is perusable for him to raise a valid defence to the effect that the complainant had no competency whatsoever to begin with to have advanced the alleged amount to him and for the purpose of proving the same he is certainly entitled to get

the documents as regards the finances of the complainant in order to show that such advancement could not have been made by the complainant.

9. The complainant has specifically stated having been in a job at Dubai up to the year 2007 in which he was earning 400 Dirham per month and having started business as proprietor thereafter in his own name. He has not disclosed anywhere as to what was his income from the said business. The question hence naturally arises about the huge sum lent by him to the accused that too through the mode of cash payment. Therefore, the documents as are sought to be summoned by the accused are necessary and desirable in the fact situation of the case.

10. In *John Abraham (supra)* the Apex Court has dealt with the necessity and desirability of the documents for drawing presumption in favour of the complainant under Section 138 read with 139 of the Negotiable Instruments Act to the effect that the burden lies upon him to show that he had the requisite fund to advance money/loan to the accused. In my opinion, the accused must get a chance to question the complainant with the documents for establishing his innocence, if any. That is also necessary in view of the provision of Section 138 of the Negotiable Instruments Act, 1881 which draws certain presumption in favour of the complainant. The documents are relevant for adjudication of financial capacity of the complainant. Complainant has to prove that there is legally recoverable debt payable by the accused to him and the documents sought by the accused are one of such mode where authenticity and veracity of the claim and counter claim can be tested.

11. Thus as a result of the aforesaid discussion, the trial Court has erred in rejecting the application under Section 91 of the Cr.P.C. filed by the accused. Resultantly the impugned order is hereby set aside and the

application preferred by the accused under Section 91 of the Cr.P.C. is allowed. The trial Court is directed to take consequential action to summon the documents as mentioned in the application preferred by the accused under Section 91 of the Cr.P.C. while affording opportunity to confront the complainant with the aid and support of those documents.

12. The petition is accordingly allowed and disposed off.

**(PRANAY VERMA)**  
**JUDGE**

jjyoti