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Mr. Nit
age:33
residing at room No.7,
3rd floor, Merchant Chamber,
C.S.Rane Road, Worli,
Bombay 400 018

Applicant

versus

1. The State of Maharashtra,

2. Mr. Hasmukh Kanji Gala
age: 54 years, residing at ,
158/160, 3rd floor, Krishna Niwas
Bhavani Shankar Road, Dadar
Mumbai 400 028.

.. Respondents.

Mr. Sandeep C. Kekane, i/b M.K. Kocharekar for the applicants in all the matters.

Ms. A.A. Mane, APP for the respondent No.1 State..

CORAM: J. H. BHATIA, J.

DATED: 5th July, 2010.

Judgment

1. Heard learned counsel for the parties.
2. The applicant before this Court is the original accused while respondent No.2 is the original complainant. The complainant

process as per law. The learned Additional Session Judge directed the Magistrate to proceed with the complaint from the stage of recording verification statement of the complainant and to proceed for issuing process as per law. The accused was not satisfied with that order and he filed Criminal Writ Petition No.318 of 2008. That writ petition was dismissed upholding the order of Sessions Court. In view of the order, passed by the Sessions Court, the learned Magistrate recorded verification statement of the complainant and also he recorded the statement on oath of witness from Dena Bank. In view of oral as well as documentary evidence placed by complainant, learned Magistrate passed fresh order dated 24.4.2009 for issuing process u/s 138 of Negotiable Instrument Act against the accused. That order is challenged in the present application u/s 482 of the Criminal Procedure Code.

4. The learned counsel for the applicant accused contended that the verification statement is not mere formality and unless the complainant makes statement on oath in respect of the relevant

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“In a case where the Court is required to issue summons which would put the accused to some sort of harassment, the Court should insist strict compliances of the statutory requirements. In terms of Section 200 of the Code of Criminal Procedure, the complainant is bound to make statements on oath as to how the offence has been committed and how the accused persons are responsible therefor.”

5. In **Captain Lance Irwin Lobo -vs- Ismail D’souza @ Angelo Ismail De Souza & anr (2007 ALL MR (CRI) 623)**, the learned Single Judge of this Court, Panji Bench considered the provisions of section 200, 202 and 204 and observed in para 16 as follows :-

“16. A conjoint reading of sections 203/204, Cr. P.C shows that process is to be issued after considering the statement on oath of the complainant and of the witnesses and the result of the inquiry or investigation, if any, under Section

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is true or not. It is with a view to separate chaff from the grain as many a times complaints do contain unfounded allegations and it is the duty of the Court to ensure that what is stated in the complaint is also stated by the complainant on oath and it is only then that based on such statement the process can be issued. The corollary of this would be that unless offences are disclosed from the statement on oath, no process can be issued only based on averments in the complaint. The complainant is bound to make a statement on oath as to how the offence was committed and how the accused persons are responsible therefor. After the statement on oath is recorded, a Magistrate is required to apply his judicial mind to the facts of the case and the law applicable thereto and find out what offence/s is made out, notwithstanding that the other party at that stage is unrepresented. As observed by the Apex Court time and again, summoning of an accused in a criminal case is a

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the accused. In other words, the examination of the complainant on oath is for the purpose of ascertaining whether a prima facie case is made out against the accused to issue process so that the issue of process is prevented on a complaint which is either false or vexatious or intended only to harass. As observed by the Apex Court in Punjab national bank and others -vs- Surendra Prasad Sinha (1993 Supp (1) SCC, 499), it is salutary to note that judicial process should not be an instrument of oppression or needless harassment. A Magistrate is required to find out whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued and at that stage the Court has got to be circumspect in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process

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6. In that case certain contract had taken place about the property in the year 1995, wherein a Power of Attorney was executed and that Power of Attorney was revoked in March,2001 by issuing public notice. The revocation of the said Power of Attorney was contested by the accused in that case. The civil suit was also filed in 2001 for specific performance of the contract and for damages by the complainant. Sale deed was executed by the accused as Attorney of the complainant in May,2003. On 25.11.2004, the complainant filed complaint u/s 409, 418 423, 465, 468, 471 and 120-B Indian Penal Code against accused persons. Process was issued by the learned Magistrate for the offences except under section 468. The accused challenged that order in the court of Sessions. The Additional Sessions Judge deleted most of the sections and maintained the order to issue process only for the offence of breach of trust u/s 409 IPC. That order was challenged by the accused before High Court, mainly on the ground that there

was not a valid complaint to
make a complaint. Taking
into consideration the facts, this
Court is satisfied that the facts in his
verification statement are true and correct
and therefore, the complaint was dismissed.

7. In the present case, in the complaint all the details of the transactions are given. In the verification statement dated 18.9.2008, the complainant had clearly stated that he had made payment to the accused and accused had given cheque to him. The cheque was presented to the bank, but it was unpaid. Cheque was presented but it was returned unpaid. He asked accused two to four times for making the payment of money but he failed. Then he issued demand notice. That notice was received by him and he also replied. This verification statement is to be read alongwith documents, which are produced with the complaint. The documents include, cheque issued by the accused, memos issued by both the banks, particularly drawee bank, to the effect that the cheque was being returned unpaid for want of sufficient funds.

8. Taking into consideration the documents filed in support of the complaint, in my considered opinion, verification statement

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to make out a case u/s 138 of Negotiable Instrument Act.

9. Taking into consideration all the facts and circumstances, I find no illegality or irregularity in the impugned order passed by the Magistrate for issuing process. The authorities in case M.S. Narayana Menon (supra) does not come to the rescue of the accused. I find no substance in the contentions raised on behalf of the accused.

10. For the aforesaid reasons, the applications stand dismissed.

(J. H. BHATIA, J.)