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

**CRIMINAL APPLICATION NO. 1710 OF 2010
 WITH
 CRIMINAL APPLICATION NO. 1711 OF 2010
 WITH
 CRIMINAL APPLICATION NO. 1712 OF 2010
 WITH
 CRIMINAL APPLICATION NO. 1713 OF 2010
 WITH
 CRIMINAL APPLICATION NO. 1714 OF 2010
 WITH
 CRIMINAL APPLICATION NO. 1715 OF 2010
 WITH
 CRIMINAL APPLICATION NO. 1716 OF 2010
 WITH
 CRIMINAL APPLICATION NO. 1717 OF 2010
 WITH
 CRIMINAL APPLICATION NO. 1718 OF 2010
 WITH
 CRIMINAL APPLICATION NO. 1719 OF 2010**

Mahaganga Sahakari Sakhar Karkhana
 and Ors.

... Applicants

Versus

Umesh Mahadevrao Mahadik and anr.

... Respondents

Mr. Kedar Patil, Advocate for the applicants.

Mr. Vijay Killedar, Advocate for respondent no. 1.

Mrs. M.M. Deshmukh, A.P.P. for State.

**CORAM : K.U. CHANDIWAL,J.
 DATED : AUGUST 30, 2011**

P.C.

Heard the learned counsel for the respective parties.

2. These 10 applications are heard together as they involve identical question and the parties are the same. The petitioner questions propriety of issuance of process for the offence under section 138 of N.I. Act in respect of 10 cheques in the denomination of Rs. 25 lacs each by the petitioner herein to respondent.

3. Mr. Patil the learned counsel for the petitioner canvassed that there is no controversy inter se agreement between petitioner and respondent no. 2. However, according to him, the cheques were given as security for payment of Rs.2.50 crores. This amount is indeed paid for which receipts are on record. The complainant has not stated his status as to how he got authority to file a complaint.

4. Upon going through the complaint, appearing at page 11 the learned counsel for the complainant (respondent) agrees that the status of Umesh Mahadik on behalf of Siddhartha Chemical has not been disclosed either in paragraph 1 or any where in the complaint or even in the verification clause. The learned counsel desires to place reliance on the agreement. However, the agreement is signed by Chairman and not

by Umesh Mahadik.

5. The learned counsel for the petitioner submits by virtue of the agreement and particularly clause 15(4) of the same dated 7.11.2003, incorporated that 10 cheques of Rs. 25 lacs. each by the petitioner to purchaser (respondent)-complainant were as and by way of security as it was agreed upon by the purchaser of the said agreement respondent herein to return the cheques of the corresponding amount of Rs.25 lacs., whenever the amount was paid and was adjusted and the payment had come in the Escrow account which was between the parties. That apart the letter dated 7.11.2003, also refers to 10 cheques as post dated cheques handed over to respondent as and by way of security for total amount of Rs. 2.5 Crores.

6. The another contention that has been raised by the petitioner is, the amount is indeed paid to the respondent/complainant for which receipts are tendered on record at Exh. H showing payment of Rs.2 Crores on 17.5.2006, Rs. 10 lacs. on 3.2.2007, Rs. 20 lacs on 08.01.2007, Rs. 50 lacs. on 19.4.2007 and Rs. 20 lacs. on 16.5.2007. There is no dispute about respondent receiving these amounts. However, respondent has canvassed that these amounts were towards another account between the

parties in which petitioner was owing to the respondent company.

7. Taking survey of the events as incorporated in the complaint and unfortunately not disputed by the complainant, the facts emerge as :

- (a) the complaint is not the authorized person as there is no resolution on record nor any affirmation in the complaint.
- (b) The cheques in question were given as and by way of security.
- (c) The amounts are paid and liability is discharged by the petitioner.

8. Taking survey of the above facts, I find that the learned Judge committed error in issuing process against the petitioner herein in respect of the 10 cheques issued by the petitioner. Consequently the order of the learned Additional Sessions Judge, Sangli in respective Criminal Revision application of the petitioner was also flowing with error and requires to be interfered with. The orders of issuance of process as also that of the revisional court is set aside. The complaints in all the matters against the petitioner are dismissed. The remedies to

the parties in respect of their respective claims is open before the competent civil court.

(K.U. CHANDIWAL,J.)