

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1237 OF 2015

Shwet Saritafarm,
Products A Registered Partnership Firm
under the Indian Partnership Act having
its Office Ashram at "Anant" Vijaywadi,
Chalisgaon, Dist. Jalgaon,
through its partner C.E.O.,
Police Station, Chalisgaon & ors. ...Petitioners

versus

The State of Maharashtra & anr. ...Respondents

.....
Ms. Surekha Mahajan, Advocate for petitioners
Mr. S.N. Morampalle, A.P.P. for respondent/State
.....

CORAM : N.W. SAMBRE, J.

DATE : 20th OCTOBER, 2015

ORAL ORDER :

Heard Ms. Mahajan, learned Counsel for the petitioners.

2. This petition is by the accused persons seeking quashing of Summary Criminal Case No. 158 of 2014 pending before learned Judicial Magistrate, First Class, Chalisgaon.

3. Facts as are necessary for deciding the present proceedings are as under :

That the petitioners and respondent No. 2 herein entered into agreement of purchase of raw sugar which was agreed to be supplied by the petitioners, for which the complainant provided bank guarantee which was encashed by the petitioners. As the terms of the agreement were not honoured, the petitioners-accused issued three cheques of Rs.50,00,000/-, Rs.50,00,000/- and Rs.46,42,100/- dated 30/03/2010, 10/04/2010 and 10/05/2010 which were dishonoured upon presenting the same on 10/05/2010 for want of funds. As statutory notice under Negotiable Instruments Act was issued on 31/05/2010 which was received on 11/06/2010 by the petitioners and as such, the complaint was presented on 26/07/2010.

4. Ms. Mahajan, learned Counsel for the petitioners, while trying to make out a case for quashing, would urge that the transaction in question is purely contractual and as such, the proceedings under the provisions of Negotiable Instruments Act ought not to have been initiated. She would then urge that the proceedings are barred by limitation, as initiation of the proceedings after service of the notice on the petitioners is beyond the statutory period of 30 days.

5. From the record it depicts that learned Magistrate after recording plea has proceeded to order the issuance of process under

Section 138 of the Negotiable Instruments Act and as such, passed an order on 13/08/2010 to that effect.

6. Though the nature of transaction appears to be contractual, however there is presumption under the Negotiable Instruments Act in favour of present respondent-complainant that the cheque was issued for admitted debt which is required to be rebutted by the petitioners by adducing sufficient evidence. Apart from above, whether after dishonour of cheque, the notice was issued within stipulated period and whether the complaint was filed within statutory period is a issue which cannot be examined by this Court at this stage for want of material.

7. In view of above, in my opinion, no case for interference is made out, however, it shall be open for the petitioners to raise said plea at appropriate level during the trial. The petition stands dismissed.

[N.W. SAMBRE, J.]