

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

CRIMINAL APPLICATION NO. 150 OF 2015

Maqbool Ahmed Maqsood Khan & Anr. .. Applicants

v/s.

State of Maharashtra & Anr. ..Respondents

Mr. Aniket U. Nikam a/w Ashish Satpute for the applicant
Mr. Sandesh D. Patil for respondent no.2
Mr. Rajesh More, APP for respondent State

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 6th OCTOBER, 2015.**

P.C.

1. Heard learned Counsel for the respective parties. Rule.

By consent, Rule is made returnable forthwith.

2. The applicants herein who are accused nos. 2 and 3 in SCC No.2601 of 2014 have challenged the order dated 17.10.2014, whereby the learned J.M.F.C., 5th Court, Bhiwandi, Thane has issued process under Section 138 of the N.I.Act.

3. The respondent no.2 complainant had alleged that the

accused no.1 and the applicant no.2 are the real brothers and are jointing running the business of Sales and Purchase in old motors parts and scrap of heavy vehicles and other metal scrap at Kuwarni Compound, Bhiwandi. The complainant had further alleged that the accused had placed an order for 31 tonnes of scrap and that he had supplied the same on 10th September, 2013. The complainant had stated that the accused had issued Cheque No.000111 dated 15th May, 2014 for Rs.8 lakhs towards the price of the said scrap material and the said cheque was dishonoured.

4. It is not in dispute that the cheque was issued by the Mansoor Ahmed Maqsood Khan, the original accused no.1. The accused nos. 2 and 3 were not the signatories of the said cheque and are not liable to be prosecuted under Section 138 of the N.I. Act. The case is also not covered under Section 141 of the N.I. Act. Since the applicants – original accused nos. 2 and 3 are neither the drawer of the cheque nor it is alleged that they were vicariously liable under Section 141 of the N.I. Act, no offence

under Section 138 of the N.I. Act can be made out against them.

5. Under the circumstances, the application is allowed. The impugned order dated 17.10.2014 is quashed and set aside qua the present applicant nos.1 and 2.

6. Rule is made absolute.

(ANUJA PRABHUDESSAI, J.)

Certificate

Certified to be true and correct copy of the original signed
judgment / order.